

**Sabbatical leave report**

**Treaty Bodies Branch**

**UN Office of the High Commissioner for Human Rights**

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**Implementation of decisions under treaty body complaints procedures – Do states comply? How do they do it?**

**January 2017**

**Disclaimer: The author is currently the Secretary of the UN Human Rights Committee. However, the views expressed in this paper are solely those of the author and do not necessarily represent the official position of the United Nations or the treaty bodies.**

**Acknowledgement**

**I should like to thank Gerald Neuman, J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law Co-Director, Human Rights Program Harvard Law School, who provided invaluable assistance and a great welcome for me at Harvard Law School. His insightful comments and suggestions throughout the process kept me focused and enriched the text.**

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**ANNEX I - Examples of cases upon which good/satisfactory measures taken by states parties to follow-up on findings of violations under the individual complaints procedures of the treaty bodies**

**ANNEX II - Examples of mechanisms/procedures of implementation**

## Introduction

1. The Secretariat is regularly asked by states, members of civil society, victims, and UN colleagues for information on the extent to which states abide by decisions of the treaty bodies and the means by which they implement them internally. This project will attempt to answer what states do when confronted with a violation of a treaty under the individual complaints procedures and what internal mechanisms they have in place to implement these decisions. Many scholars have referred to the need to develop national mechanisms or procedures for the protection of human rights. As early as 1991, one commentator suggested that, “Creating new mechanisms and strengthening existing follow-up mechanisms is a necessity if governments and public opinion are to maintain confidence in the effectiveness of the UN human rights implementation machinery.”<sup>1</sup> Yet another advised that the, “...work of the treaty bodies themselves should be heavily weighed towards encouraging and facilitating the development of national systems and processes which support and defend protected rights.”<sup>2</sup>

2. As with all human rights mechanisms, the primary responsibility to implement decisions of treaty bodies is with states. A number of states have recognised this lacunae and some have requested support from the Secretariat of the OHCHR<sup>3</sup>. The research herein focuses on mechanisms of implementation but it should be borne in mind that mechanisms cannot replace political will to enforce decisions: an issue that is called into question in states which have mechanisms in place but which consistently fail to implement treaty body decisions.

3. The results of this project should contribute towards the implementation of General Assembly Resolution 68/268 of April 2014, “Strengthening and enhancing the effective functioning of the human rights treaty body system

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<sup>1</sup> Markus G. Schmidt, in “Follow-up to decisions, Recommendations and Reports under United Nations Human Rights Procedures”.

<sup>2</sup> Alston Gallagher, in “Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners, in P. Alston and J. Crawford (eds), *The Future of Human Rights Treaty Monitoring*”. According to the Parliamentary Assembly of the Council of Europe (PACE) in its resolution of 2011, “a major reason for deficient compliance with Strasbourg Court judgements is the lack of domestic mechanisms and procedures to ensure swift implementation. See Resolution 1787(2011), *Implementation of Judgements of the European Court of Human Rights* (January 26, 2011).

<sup>3</sup> E.g. New legislation by Kyrgyzstan was facilitated by numerous workshops organised by OHCHR. Korea set up a “Task Force on individual complaints” in June 2006, with the participation of the Ministry of Justice, the Ministry of Foreign Affairs and Trade, the National Court Administration, and the National Human Rights Commission of Korea. The Task Force examined individual complaints filed against the Government, the effective and reasonable follow-up measures to implement the Committee’s Views, and the challenges arising during the implementation. On 18 September 2007, the Ministry of Justice held a public hearing on ways to domestically implement the decision on individual complaints collecting opinions from legal and academic communities as well as domestic NGOs. Despite these efforts, the Human Rights Committee (HRCtee) in its Concluding Observations of 2015<sup>3</sup>, regretted that the State had failed, except in one case, to implement its decisions and had no mechanism for implementation. Many of these cases relate to the National Security Act and Conscientious Objection – the State does not provide for alternatives to military service.

(...)”. This resolution requests the Secretary General through the Office of the High Commissioner for Human Rights (OHCHR), “to support States parties in building capacity to implement their treaty body obligations and to provide in this regard advisory services, technical assistance and capacity building ...” (e) Facilitating the sharing of best practices among states parties...” This project should allow OHCHR, through its capacity building and technical cooperation activities, to better assist states in meeting their treaty obligations under the individual complaints procedures.

## **Methodology**

4. In Part 1, I provide brief information on the follow-up procedures of the treaty bodies, the impact of treaty body complaints procedures, and challenges to implementation, including the legal status of decisions, and the translation of states international legal obligations into national law.

5. In Part II, I analyse the effectiveness of the mechanisms set out in Annex II, by observing whether they were applied in implementing the cases in Annex I and why they may not have been applied in other cases. In pertinent cases, I indicate the extent to which the same mechanism is applied to implement decisions of regional bodies. I also highlight the large number of cases, where a satisfactory or partly satisfactory outcome was achieved without a mechanism. Finally, I provide a number of recommendations for states and the treaty bodies.

6. Annex 1 is a digest of all treaty body decisions, which were satisfactorily or partially satisfactorily implemented.

7. Annex II is a compilation of the available legislation or explanation of mechanisms and procedures established by states to implement decisions and provided in their reports, replies to lists of issues, and answers to questions posed by the Committee during examination of reports. My cut-off-date was October 2016. I categorised the mechanisms established by type.

8. This research focuses on information received through the treaty body process: under the reporting procedures of the treaty bodies and the individual complaints procedures. I reviewed annual reports of the treaty bodies, their follow-up reports, concluding observations, and summary records of dialogues with the HRCttee (Human Rights Committee) where pertinent. I also looked at secondary literature on the implementation of treaty body decisions. I concentrated in particular on the work of the HRCttee, as the bulk of the information received on implementation came to it. This is due to its lengthy record in considering complaints and its recent practice (of the last 5/6 years) of requesting information on mechanisms of implementation under the reporting procedure<sup>4</sup>. I was also assisted by a number of colleagues and old and new friends who I would like to thank here for their patience as much as the information provided<sup>5</sup>. It is possible that other states parties to the

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<sup>4</sup> Article 40 of the International Covenant on Civil and Political Rights.

<sup>5</sup> I should like to thank Prof. Yuval Shany, Hersch Lauterpacht Chair in Public International Law, Hebrew University, Mount Scopus and member of the HRCttee. I am also indebted to

treaties have implementation mechanisms, of which we have not yet been made aware and are thus not included here. It is hoped that this research may be continually updated by the Secretariat for the purposes of continuing to build upon this compilation of good practices.

## **PART I**

### **Brief overview of treaty body follow-up procedures**

9. To date, eight of the nine treaty bodies (HRCttee, CERD, CAT, CEDAW, CRPD, CED, CESCRC, CRC)<sup>6</sup> may receive and consider individual complaints of human rights violations. This will increase to nine in the foreseeable future when article 77 of the Convention on Migrant Workers (CMW) enters into force. Of the four treaty bodies that have been considering individual complaints for many years (CCPR, CERD, CAT, CEDAW), around 1,130 decisions of human rights violations have been issued. As the HRCttee has made the vast majority of decisions, the focus here is on the outcome of cases arising under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup>.

10. Upon a treaty body finding of a violation, it is expected that the state will comply with the decision and grant a remedy to the victim, guided by the remedies suggested by the Committee. Five of the treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD) have a follow-up procedure to assess compliance of decisions. The HRCttee has taken the lead in developing this procedure. At its 39th session in July 1990, it established the mandate of

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Simon Walker, and Matias Pellado of the Human Rights Treaties Branch of OHCHR, and several members of the Petitions Unit at OHCHR: Carla Edelenbos, Ivo Petrov, Albane Prophette Palasco, Carmen Rueda, Yasmine Hadjoudj, Antoanela Pavlova and Youcef Seridj; Maria Diaz Crego and Juan Pablo Calderon Meza, Harvard Fellows; Cesar Rodrigo Landa Arroyo, Profesor Principal Coordinador del Área de Derecho Constitucional Facultad de Derecho Pontificia Universidad Católica Del Perú; Oscar Cubas Barrueto, Human Rights Consultant for the Vice Ministry of Human Rights and Access to Justice in Peru; Carlos Augusto Sibille Rivera, Graduate Institute, Geneva; Martin Scheinin Professor of International Law and Human Rights Department of Law, European University Institute Florence and ex-member of the HRCttee; Angel Gabriel Cabrera Silva, Harvard Law Student; Janos Fiala, Harvard PHD student; Adrian Scheidegger, Agent suppléant du Gouvernement Suisse devant la Cour européenne des droits de l'Homme, le CAT, le CERD et le CEDAW; Jorge Meza, Human Rights Specialist at the Inter-American Commission on Human Rights; Christiane Heffermehl Lange, Norway.

<sup>6</sup> The Human Rights Committee monitors the International Covenant on Civil and Political Rights (HRCttee); the Committee on the Elimination of all Forms of Racial Discrimination monitors the International Convention by that name (CERD); the Committee against Torture monitors the Convention of that name (CAT); the Committee on the Elimination of Discrimination Against Women monitors the Convention of that name (CEDAW); the Committee on the Rights of Persons with Disabilities monitors the Convention of that name (CRPD); the Committee on Enforced Disappearances monitors the Convention of that name (CED); the Committee on Economic, Social and Cultural Rights monitors the Covenant of that name (CESCR); and the Committee on the Rights of the Child monitors the Convention of that name (CRC).

<sup>7</sup> For more information on follow-up activities under the Human Rights Committee, see Suzanne Egan, in “The UN Human Rights Treaty System: Law and Procedure”, and Moller and de Zayas, in “United Nations Human Rights Committee, Case Law 1977-2008”.

Special Rapporteur for the Follow-Up of Views.<sup>8</sup> The procedure remained confidential until March 1993, when the Committee decided, in principle, to make follow-up information public<sup>9</sup>. CEDAW commenced the follow-up procedure on an *ad hoc* basis in 2006 and started systematically preparing follow-up reports in 2008.<sup>10</sup> CAT began its follow-up procedure in May 2002<sup>11</sup>, CERD in August 2005<sup>12</sup>, and CRPD in September 2013.

11. For some treaty bodies, follow-up procedures were established under the treaty and under their rules of procedure<sup>13</sup>, and some only under the latter<sup>14</sup>. The treaty bodies nominate either one or two follow-up rapporteurs to engage in follow-up activities. Such activities include<sup>15</sup>: producing follow-up reports for the Committee's sessions; meeting with representatives of states; sending note verbales to states and authors; and in rare occasions, when the financial situation allows, going on mission to states.<sup>16</sup> The treaty bodies consider information on follow-up during their sessions in public meetings and the information and analysis can be found in their annual reports up until 2014<sup>17</sup> and thereafter in follow-up reports on the OHCHR website. The Committees also seek follow-up information under their reporting processes. Questions posed by treaty bodies to states vary from requests on general implementation mechanisms (mostly HRCttee) to specific action taken in particular cases<sup>18</sup>.

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<sup>8</sup> A/45/40, Vol.II, Appendix XI.

<sup>9</sup> A/50/40. For a full picture of the follow-up procedure in the early days of the HRCttee, see Alfred de Zayas in, *The Review of the International Commission of Jurists*, No. 47/1991.

<sup>10</sup> A/65/63 - Annex XII

<sup>11</sup> A/70/44

<sup>12</sup> A/69/18

<sup>13</sup> Follow-up under the CEDAW is based on paragraphs 4 and 5 of article 7 of the Optional Protocol and rule 73 of the Committee's Rules of Procedure (Part of HRI/GEN/3/Rev.3) in particular the designation and functions of the rapporteur or working group on follow-up, and rule 74 states that information on follow-up, including the decisions of the Committee on follow-up, shall not be confidential unless otherwise decided by the Committee.

<sup>14</sup> For example, for the CRPD, see rule 75 of its Rules of Procedure (CRPD/C/4/2), of 13 August 2010.

<sup>15</sup> In their follow-up activities, the treaty bodies are assisted by NGOs (national and international), other UN bodies like UNDP, OHCHR field offices, the "good offices" of the High Commissioner for Human Rights, and the IOM (which assisted in the *X. v. Sweden* deportation case).

<sup>16</sup> To date, the HRCttee has undertaken one mission (Jamaica, in June 1995) and the CAT one mission (Senegal, from 4 to 7 August 2009). The latter, which related to Senegal's failure to try Hissene Habré for crimes against humanity, war crimes and torture that he is alleged to have committed during his reign in Chad, contributed to the eventual agreement by Senegal to abide by its decision and commence the trial in 2015. Mr. Habré was convicted in May 2016. See para. 114 below. The HRCttee has over the years requested several states to accept a mission (Tajikistan, Trinidad and Tobago, Democratic Republic of the Congo) but no further missions have been carried out. From 1995, in its annual reports, the HRCttee has been requesting a budget for at least one follow-up mission annually. This has not been forthcoming. Counsel, in an attempt to encourage implementation in the case of *Ouaghlissi v. Algeria* (1905/2009), adopted on 26 March 2012, suggested that the HRCttee and the CAT hold a joint mission in Algeria.

<sup>17</sup> Follow-up information can be found in annual reports up until A/69/40, which covered the period from July 2013 to March 2014. After this date, due to word limits initiated under the treaty body strengthening resolution of the General Assembly (A/RES/68/268), follow-up information is provided in separate follow-up reports on the Committee's webpage.

<sup>18</sup> For example, the HRCttee almost systematically asks about the implementation of particular cases in its dialogue with states. The CEDAW, in its "list of issues" to Hungary in

12. While it is not the intention of this project to examine the issue of remedies, the different approaches of the treaty bodies to remedies in their decisions, has an impact on the implementation of cases. The CEDAW and CRPD, have a more prescriptive approach to remedies, than the HRCtee and the CAT.<sup>19</sup> The former request detailed remedies of a general nature as well as individual remedies. In its recent decisions, the CERD appears to have departed from its usual practice and is following a more prescriptive line<sup>20</sup>. Committees adopting the prescriptive approach ultimately leave the follow-up of these general remedies to the reporting part of their work, by specifically asking states to respond on these remedies in the context of their subsequent periodic report.<sup>21</sup> Is this a duplication of Committee work? To what extent can Committees reasonably expect to follow-up on detailed general recommendations, in the context of an increase in decisions issued, increased demands on their time, and in particular the current limitations of the follow-up procedure? Such detailed general remedies might be more suited to being dealt with in their entirety by the reporting process, allowing the individual complaints procedure and follow-up thereto to largely concentrate on individual redress.

13. The follow-up procedure is in the process of development. Under the HRCtee, it has advanced from merely asking for information on implementation, to analysing, evaluating and grading state responses on each remedy provided. Until its 109<sup>th</sup> session, the HRCtee categorised implementation as “satisfactory” when the State party showed a *willingness* to implement the Committee’s recommendations or to offer the author an appropriate remedy<sup>22</sup>. Thus, the Committee reviewed the redress provided by the state, as a whole, generally satisfactory or unsatisfactory, and on some occasions “partially” satisfactory.

14. From the 109<sup>th</sup> session, the HRCtee, started applying a more complex evaluation system, where the states responses to each part of the suggested remedy is assessed and graded individually<sup>23</sup>. The HRCtee had adopted this

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2007(CEDAW/C/HUN/Q/6), referred to its decision to bring to a close its follow-up in, A. T. v. Hungary (2 /2003), adopted on 26 January 2005, and to request any further information on follow-up to the decision in the framework of the reporting procedure under article 18 of the Convention. The CRPD has established a similar practice.

<sup>19</sup> There have been no decisions so far under the complaints procedures of the CRC. The CED found a violation in one case so far, Yrusta v. Argentina (CED/C/10/D/1/2013), adopted on 11 March 2016. The approach taken in the remedy section is akin to the HRCtee: apart for a non-repetition request, specific recommendations relating to the authors. The State party was asked to provide its comments within six months. It is not clear yet what approach the Committee will take to follow-up. The CESCR adopted its first case on 17 June 2015, finding violations in I.D.G v. Spain (002/2014), adopted on 17 June 2015. The approach taken in the remedy section is akin to the CEDAW.

<sup>20</sup> See for example CERD/C/88/D/56/2014, adopted on 4 December 2015.

<sup>21</sup> See Jallow. v. Bulgaria (32/2011– see Annex 1)

<sup>22</sup> Report of the HRC, A/64/40 (Vol.1) (Oct. 2008 - July 2009)

<sup>23</sup> Action satisfactory: “A” - measures are largely satisfactory

Action partially satisfactory: “B1” - Substantive action taken, but additional information required or “B2” - Initial action taken but additional action and information required.

same evaluation procedure to follow-up to its concluding observations a number of years earlier: a procedure perhaps more suited to the large number of different specific recommendations in each concluding observation. The CRPD has also adopted this new approach to evaluating follow-up responses under the individual complaints procedure. It has provided a useful tool for the Secretariat to keep track of the status of the many different remedies suggested per case arising from its prescriptive approach to remedies. However, his new assessment process proved complicated and time consuming for the HRCtee to manage in part due to the number of cases under follow-up. During the 118<sup>th</sup> session (October/November 2016), the Committee amended its grading system from eight to five grades to add clarity to the meaning of the criteria and to make it more manageable to assess.<sup>24</sup> It is intended that this new grading system shall be applied from the following March 2017 session with respect to follow-up to concluding observations and Views. It is yet to be seen how this new grading will affect implementation and whether other treaty bodies will follow suit.

15. The question remains as to whether it really adds value to split up the limited remedies recommended for individual and lengthy analysis? How has this approach assisted authors or states in implementing decisions? Perhaps the purpose may well be served by: 1. a more defined distinction in the remedy section of treaty body decisions between individual and general

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Action not satisfactory: “C1” - Reply received but actions do not implement the Decision/recommendations or “C2” - Reply received but not relevant to the Decision/recommendations No cooperation with the Committee: “D1” - No reply to one of more recommendations or parts of recommendations D2 - No reply received following reminders Measures taken are contrary to the recommendations of the Committee - “E” - The reply indicates that the measures taken go against the Decision/Recommendations of the Committee.

<sup>24</sup> [A] Reply/action largely satisfactory: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee: in this case, the Special Rapporteur for follow-up to concluding observations or views requests no additional information from the State party and the follow-up procedure on the particular issue is discontinued. [B] Reply/action partially satisfactory: The State party took steps towards the implementation of the recommendation but additional information or action remains necessary. In this case, the Special Rapporteur for follow-up to concluding observations or views requests additional information, within a specific time frame or in the next periodic report, on specific points of the State party’s previous reply that require clarification, or on additional steps taken by the State party to implement the recommendation. [C] Reply/action not satisfactory: Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration. In the case of follow-up to concluding observations, information provided by the State party that reiterates information previously made available to the Committee prior to the concluding observations is considered not relevant for these purposes. The Special Rapporteur for follow-up renews the request for information on steps taken to implement the recommendation. [D] No cooperation with the Committee: No follow-up report received after reminder(s). The State party has not provided a follow-up report after one reminder and a request for a meeting with the Special Rapporteur for follow-up to concluding observations or views. [E] The information or measures taken are contrary to or reflect rejection of the recommendation: The State party adopted measures that are contrary to or have results or consequences that are contrary to the recommendation of the Committee or reflect rejection of the recommendation.



remedies and then 2. an overall evaluation of implementation of the individual and general remedies provided under follow-up.

### **Impact of the individual complaints procedure and follow-up challenges**

16. The impact of the work of the treaty bodies is a regular theme in human rights discourse extending to the work of the individual complaints procedures. Several studies have appeared indicating a rather low implementation rate of treaty body decisions (somewhere between 12 – 21% for the HRCttee). I have found here a rate of around 24 % with respect to the combined good responses from all of the treaty bodies to date<sup>25</sup>. This is clearly unsatisfactory. However, these low statistics can partly be explained by some of the challenges of the follow-up procedure. The nature of follow-up is such that implementation is difficult to assess in purely mathematical terms and the process can take years to reach completion: a problem recognized by the HRCttee<sup>26</sup>. Often the treaty bodies are not informed about implementation<sup>27</sup>. For the first ten years, the HRCttee expressed no interest in knowing what happened after findings of violations<sup>28</sup> and even thereafter, for many years, there was no practice of making systematic requests to states and authors for information on follow-up. Losing contact with authors remains a challenge to implementation and it is often unclear what has been done<sup>29</sup>. The

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<sup>25</sup> According to the Committee, they had satisfactory ratings of between one quarter and one third, see A/49/40, A/50/40, A/64/40. However, these figures were used merely as a guide and not based on a complete analysis of follow-up information. Heyns and Viljoens, in “The Impact of the United Nations Human Rights Treaties (2002)”, indicate a “very limited demonstrable impact”. The Open Society, in “From Judgement to Justice”, in 2010, indicated that the compliance rate “hovers lightly above 12 per cent”. Bayefsky, in “The UN Human Rights Treaty Body System: Universality at the Crossroads”, in 2001, stated that the record of compliance of the Committee was “extremely poor”, indicating that remedies were forthcoming in only 21% of cases. Based on the compilation of good examples of follow-up to the 266 decisions, in annex 1 herein, it amounts to around 24% of the 1,138 adverse decisions made so far by the treaty bodies: 975 decisions by the HRCttee (A/71/40); 119 by the CAT (A/71/44); 8 by the CRPD (CRPD/C/16/2); 15 by the CERD (A/71/18); and 23 by the CEDAW (A/71/38), as set out in their annual reports of 2016. This figure, which is slightly higher than others, is likely due to the fact that it relates to all treaty body decisions including the CAT rather than just the HRCttee. The CAT has a particularly high rate of compliance, given that the majority of cases relate to non-refoulement cases under article 3: cases more easily complied with for the reasons given in Part 11. This calculation takes into account all of the cases compiled in annex 1, except the cases in which the decision itself was considered a sufficient remedy by a committee and the state had therefore nothing to do in terms of remedy, cases where no violation had taken place but a positive step had been taken nevertheless, or the discontinuance cases.

<sup>26</sup> A/65/40, Vol 1, Chpt VI.

<sup>27</sup> This is particularly true in the early days of the procedure – “the Committee was informed by States parties in only a relatively limited number of cases of any measures taken by them to give effect to the decision adopted.” A/49/40. For example, in *Marques v. Angola*, (1128/2002 – see Annex 1), amendments to Angola’s press law partially remedied portions of the criminal law under which Marques had been convicted, but those changes were never attributed to the HRCttee’s Decision, which was never informed of it in the states follow-up reply.

<sup>28</sup> Moller and de Zayas, in “United Nations Human Rights Committee Case Law 1977-2008”.

<sup>29</sup> In *Engo v. Cameroon* (1397/2005), having lost contact with the State party, the Committee asked the Secretariat to explore ways in which the United Nations Centre for Human Rights and Democracy in Central Africa (based in Yaoundé) could become involved in the follow-up

vagueness of remedies, in particular in the early decisions of the treaty bodies<sup>30</sup>, also contributed to poor implementation. This is an issue that some treaty bodies are aware merits more attention<sup>31</sup>.

17. In addition, to avoid the temptation of comparing the impact of the treaty body system with that of regional bodies, it should be highlighted that apart from the fact that implementation of regional decisions is not entirely clear<sup>32</sup>, the treaty bodies are notoriously under-resourced<sup>33</sup>. In fact, no resources are specifically allocated from the regular budget of the UN General Assembly for follow-up activities. This means that work performed by the Secretariat to support the treaty bodies on follow-up is undertaken in addition to their core functions (already a full plate). The treaty bodies themselves also suffer from numerous demands on their time, most of which have large backlogs of complaints to be considered and limited time to follow-up on decisions. By way of example, the HRCtee with the greatest workload in this regard may only allocate one and a half hours twice a year to reviewing follow-up reports. In short, statistics are only part of the story.

18. Several scholars have assessed the impact of treaty body decisions. While some would doubt their role as a *general* dispenser of individual justice<sup>34</sup> (as opposed to dispensing justice in a certain number of cases), many refer to the importance of its role in establishing human rights standards through interpretation of the human rights treaties. “Treaty body output has become a

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proceedings in the present case. Contact was finally made with the Ministry of External Relations as a result. (A/67/40)

<sup>30</sup> Such vagueness in the early days of the treaty bodies was recognised by the CAT in *Halimi-Nedibi Quani v. Austria* (8/1991), adopted on 18 November 1993. A/65/44.

<sup>31</sup> The HRCtee has recently considered how it can improve implementation by developing its work on remedies. Its guidance provided in General Comment 33 (CCPR/C/GC/33) is further developed in a paper on the specification of measures of redress within the scope of individual complaints. It sets out guidelines for standardizing/harmonizing the criteria used to determine what types of measures of redress are called for. The Committee adopted its paper on this issue, “Guidelines on the adoption of remedies under the Optional Protocol”, at its 118<sup>th</sup> session (17 October and 4 November 2016). The research paper upon which these guidelines was based can also be found on the website of OHCHR, entitled “Background paper prepared by Mr. Fabian Salvioli for the purposes of the Guidelines on the adoption of remedies under the Optional Protocol.” For more information on remedies see Gerry Neuman, *Bi-Level remedies for Human Rights Violations*, 55 *Harv. Int’l L.J.* 323 (2014).

<sup>32</sup> E.g., the ECtHR claims a very high satisfactory outcome from its judgments. However, as pointed out by several scholars there is no systemic study of compliance so it is not clear how this view has been arrived at. In addition, according to Andreas von Staden there is “now clear evidence that the compliance record is increasingly showing cracks” and he points to the fact that by January 2007, 5,688 judgements concerning 42 countries and dating back to 1991 were still pending for supervision of their executions. See, “Assessing the Impact of the judgements of the European Court of Human Rights on Domestic Human Rights Policies”.

<sup>33</sup> General Assembly Resolution on “Strengthening and enhancing the effective functioning of the human rights treaty body system” (A/RES/68/268) and the High Commissioner’s Report on Treaty Body Strengthening (A/66/860).

<sup>34</sup> See David Kretzmer, in “Commentary on complaint processes by Human Rights Committee and Torture Committee Members” in, “The UN Human Rights Treaty System in the 21<sup>st</sup> Century (Anne E. Bayefsky ed., 2000).” Kretzmer argued that as the Committee has only a limited capacity to consider individual communications (only adopting between 75 and 95 cases per year) but covers a jurisdiction with approximately 1.5 billion persons, it cannot be said that it is a general dispenser of individual justice.

relevant interpretative source for many national courts in the interpretation of constitutional and statutory guarantees of human rights, as well as in interpreting provisions which form part of domestic law”.<sup>35</sup> The interpretation by the treaty bodies of human rights norms are increasingly referred to in national courts and there are also examples of cases where the reasoning of HRCttee decisions influenced subsequent amendments to legislation. A pertinent example is that of Spain, which amended its legislation following numerous decisions by the HRCttee of violations of article 14 (5) on a right to review by a higher tribunal<sup>36</sup>. On 16 November 2004, the State party informed the Committee that Law 19/2003, of 23 December 2003, came into force on 16 January 2004. This law introduced the remedy of appeal against the judgments of the National Court (Audiencia Nacional) and those of the Provincial Courts (Audiencias Provinciales). According to the State, it was intended to reduce the backlog of cases before the Supreme Court and to comply with the Committee’s decisions.<sup>37</sup> The positive impact of treaty body complaints procedures as an accountability mechanism and the benefit to all individuals in a state resulting from amendments to legislation as a remedy for treaty body violations - infrequent as they might be - cannot be underestimated.

19. Unsurprisingly, regime changes can positively (or negatively) affect compliance. Following a regime change in Ecuador in the 1990s, two cases were implemented and in the friendly settlements thereto the State admitted that state agents had been responsible for torturing the authors<sup>38</sup>. In Tunisia, following the “Arab Spring” in 2011, the new government revived consideration of a long-standing case of torture and death of a student in 1991, which the State had previously failed to implement. The author informed the Committee that, in March 2013, the State authorities had proceeded to the exhumation of the body of the deceased, entrusted a Scottish independent expert with the forensic examination and assigned a new judge to the case, as recommended by the CAT. It is to be hoped that pending further information from the author, this case can finally be closed as satisfactory.<sup>39</sup>

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<sup>35</sup> International Law Association, Final Report (no.7).

<sup>36</sup> For example, in *Alba Cabriada v. Spain* (1101/2002), and *Martínez Fernández v. Spain* (1104/2002), where the HRCttee found violations of the Covenant, due to the Spanish remedy of judicial review, in particular the fact that the court of second instance was limited to an examination as to whether the findings of the trial court amounted to arbitrariness or denial of justice.

<sup>37</sup> Interestingly, in the same response, the State party insisted that: (i) the previous system of appeal (cassation) was very similar to other European systems; (ii) the European Court of Human Rights had found that the Spanish cassation complied entirely with the right to have the sentence reviewed by a higher tribunal; and (iii) that cassation was broad enough to encompass situations in which the presumption of innocence is involved. (A/60/40, A/61/40). See also Heyns and Viljoen in, “The Impact of the United Nations Human Rights Treaties”, where it is suggested that in two cases against Finland where no violations were found the HRCttee’s reasoning influenced legislation on the education system (*Harikainen v. Finland*, 40/1978) and on the Act on Alternative Civilian Service (*Aapo v. Finland*, 295/1988).

<sup>38</sup> See para. 93 below.

<sup>39</sup> *M’Barek v Tunisia*, (60/1996), adopted on 10 November 1999. (A/68/44)

## Internal legal challenges to implementation by states parties

### Legal status of treaty body decisions

20. Most work on this issue has taken place with respect to the HRCtee. Commentators hold conflicting views on the international legal status of treaty body decisions, while many states have revealed their view that they are non-binding.<sup>40</sup> It is perhaps wise, therefore, to observe the HRCtee's own rather humble view put forward in General Comment no. 33 that, although it is not a judicial body, "the Views issued by the Committee... exhibit some important characteristics of a judicial decision". "The Views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument." Also, these Views derive their character, and the importance which attaches to them, from the integral role of the Committee under both the Covenant and the Optional Protocol". Importantly, the Committee assesses states' duty, as "the obligation of States parties to act in good faith, both in their participation in the procedures under the Optional Protocol and in relation to the Covenant itself." Thus, these obligations would appear to include participating and cooperating with the Committee under the follow-up procedure. The Committee also cites the Vienna Convention in that the, "duty to cooperate with the Committee arises from an application of the principle of good faith in the observance of all treaty obligations"<sup>41</sup>. Furthermore, the word "consider" in the preamble need not be taken as meaning consideration of a case only until the adoption of a

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<sup>40</sup> Nowak, in "UN Covenant on Civil and Political Rights", suggested that the reference to article 2 (3), of the Covenant makes it clear that, "these are not mere recommendations but that state parties to the Covenant have a legal obligation to provide every victim of a violation of the Covenant with an effective remedy and reparation". For similar views, see also Scheinin, in "Work of the Human Rights Committee" and Moller and de Zayas, in "United Nations Human Rights Committee Case Law". However, Buergenthal, in "The UN Human Rights Committee", Max Planck Yearbook of United Nations Law 5 (2001), considered that Views of the HRCtee were "advisory rather than obligatory in character". According to Sarah Joseph, the Committee "...is the pre-eminent interpreter of the ICCPR which is itself legally binding" and its decisions are "... therefore strong indicators of legal obligations so rejection of those decisions is good evidence of a State's bad faith attitude towards its ICCPR obligations". Joseph, Schultz and Castan, in "The International Covenant on Civil and Political Rights: Cases, Materials and Commentary (1980)". When commenting on draft General Comment no. 33 on, "The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights", many States reveal a contrary view, see

<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC33-ObligationsofStatesParties.aspx> and many continue to maintain it. E.g., the Republic of Korea stated in its 4<sup>th</sup> periodic report (CCPR/C/KOR/4), that, "the Committee's decisions on all cases contradict the final and conclusive judgments by domestic courts, but ... cannot nullify such judgments. Unless the National Assembly takes a legislative measure, it is hard to provide effective domestic remedies with regard to such cases within the current framework of the Constitution" (...). In its 6<sup>th</sup> periodic report (CCPR/C/CAN/6), Canada stated that as it had "noted in its comments on the Committee's draft general comment No. 33 (2009), neither the Committee's interim measures requests nor its Views are legally binding on states parties".

<sup>41</sup> Vienna Convention on the Law of Treaties, 1969, article 26.

final decision, but consideration in the sense of engaging in those tasks deemed necessary to ensure implementation of the Covenant's provisions<sup>42</sup>.

21. An analysis of the Committee's standard "follow-up" paragraph in its decisions<sup>43</sup> reveals the subtle difference between states *obligation* to remedy violations of the ICCPR and their *obligation to act in good faith* (clearly a lower requirement based on the non-binding nature of decisions), to follow-up on the Committee's findings of violations. It is observed that the Committee transposes the obligation to provide a remedy under article 2, paragraph 3 of the ICCPR, as an obligation to act in good faith to provide a remedy pursuant to the Committee's decisions. It draws from the fact that the State party, "has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not" and article 2, where the state has undertaken, "to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant". Also, the Committee opines, the provision of "an effective and enforceable remedy in case a violation has been established" could also be said to be drawn in general terms from the preamble to the Optional Protocol, which defines the individual complaints procedure as achieving the purposes of the ICCPR and "the implementation of its provisions". However, the Committee's careful wording in this standard paragraph avoids the implication that it could be used to imply a *legal obligation* on the part of the State party to provide a remedy *as follow-up to the Decision*, as opposed to its legal obligation under article 2, paragraph 3, of the ICCPR to remedy a violation of the Covenant.<sup>44</sup>

22. In its General Comment adopted in 1998 on article 3 (non-refoulement)<sup>45</sup>, the CAT gave its view that "it is not an appellate, a quasi-judicial or an administrative body but rather a monitoring body created by the states parties themselves with declaratory powers only." What the CAT meant by "declaratory powers", whether it maintains this view and what affect it has on the legal status of its decisions is unclear. What is clear is that in many

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<sup>42</sup> Markus Schmidt, "Follow-up to decisions, Recommendations and Reports under United Nations Human Rights Procedures",

<sup>43</sup> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy where it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Decision and to have them widely disseminated in all three official languages of the State party."

<sup>44</sup> For further information on this distinction see summary record (CCPR/C/SR.2587), where Nigel Rodley distinguished between 1. the State party's obligation to ensure that the author has an effective remedy (article 2, para. 3 ICCPR), which involves the nature of the legal obligation that derives from a violation of the Covenant i.e. the state has an obligation to offer a remedy if a violation has been found, presupposing that the Committee had been right in finding a violation: an issue raised by many states parties and 2. the legal character/nature of the Committee's decision. He also found the suggestion that the State party had a legal obligation to offer a remedy as a follow-up to the Committee's decision problematic.

<sup>45</sup> The CAT is in the process of adopting a new general comment on this article, which should/may provide further clarification.

decisions since, the CAT has recommended specific remedies and that many states (but not all) appear to consider its decisions akin to those of the HRCttee (see Part II).

23. In sum, whatever weight is attached to treaty body decisions states may not simply ignore them. According to the International Court of Justice (on the HRCttee), they should accord it “great weight”, as it, “was established specifically to supervise the application of (the ICCPR)”<sup>46</sup>. Unfortunately, “despite the increasing acknowledgement of the legal authority of treaty bodies output at the international level ... there continues to exist a “significant gap” between this and the weight that national laws and courts attribute to this output”<sup>47</sup>.

#### Conformity with rights in the “parent” treaty

24. States are under an obligation to make any necessary amendments to national law and practice to conform to the rights in the (parent) treaty. That is apart from the obligation under the complaints procedures (Optional Protocols or article of the pertinent treaty<sup>48</sup>) to give legal effect to treaty body decisions (see below). Whether states regard themselves as monist or dualist (or indeed a mixture of both)<sup>49</sup>, under article 2, paragraph 2 of the ICCPR they undertake, “to take (the) necessary steps to adopt such legislative and other measures as may be required to give effect to the rights recognized in the Covenant”<sup>50</sup>. The Covenant per se does not create rights or obligations that are self-executing in domestic courts. According to the Committee, “article 2 ... does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law”. However, the Committee welcomes states that have done so and encourages other states to do so by reason of the enhanced protection it affords. At a minimum, states parties are required upon ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. A regular concern in the HRCttee’s concluding observations is the failure of states to make such changes thereby making the application of the Covenant in general and under the complaints procedure of the Optional Protocol even more difficult<sup>51</sup>. Similar challenges face the other treaty bodies.

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<sup>46</sup> See ICJ judgement in Ahmadou Sadio Diallo (Guinea v. DRC).

<sup>47</sup> See Rosanne Van Alebeek and André Nollkaemper, in “The legal status of decisions by human rights treaty bodies in national law”, published in “UN Human Rights Treaty Bodies, Law and Legitimacy”, edited by Helen Keller and Geir Ulfstein

<sup>48</sup> Optional Protocols to, the ICCPR, the CEDAW, the CRPD, the CESCR, and the CRC, and article 22 of the CAT, article 14 of the ICERD, article 31 of the CED, and article 77 of the CMW.

<sup>49</sup> At a basic level, in monist states international law automatically becomes part of the domestic law of the state, whereas in dualist states international treaties have no domestic effect until the provisions are incorporated into national law through the passage of parallel legislation: sometimes this is not done due to a lack of priority by some states and possibly deliberately by others.

<sup>50</sup> CCPR/C/TZA/CO/4

<sup>51</sup> E.g. see CCPR/C/GHA/CO/1 and CCPR/C/AUT/CO/5. Some scholars have pointed to the often disconnect between the Ministry of Foreign Affairs, which normally ratifies treaties on behalf of the state, and the Ministry of Justice, the judiciary and others, who will eventually

Translation of international obligations into national law - obligation to « give effect »

25. The question remains as to how the good faith obligation to implement treaty body decisions should be translated into national law. As suggested by Van Alebeek and Nollkaemper, while states are not legally bound by the Views, they “do have an obligation to allow Views ...to take legal effect (emphasis added) within their national legal order,”<sup>52</sup> apart from the obligation to make any necessary amendments to national law and practice to conform with the ICCPR itself. They go on to say that states are obliged to “give Views serious consideration, to provide good reasons for not following decisions, and in particular that they have to allow, under domestic law, the possibility to consider and wherever necessary to give effect to such decisions”.<sup>53</sup> What is meant by “serious consideration” and what would such “good reasons” for failing to comply with the Committee’s decision be? How should states allow for the possibility to consider and give effect to decisions?

26. As to the first question, clearly failing to respond at all to treaty bodies’ findings does not demonstrate serious consideration<sup>54</sup>. Merely contesting the decision without any new reasoning may also be unlikely to amount to a serious consideration, given that the Committee will already have studied the state party’s arguments during the consideration of the case. The HRCttee has already assessed numerous follow-up responses as unsatisfactory when the State party simply contests them.<sup>55</sup> What could likely be considered a “good reason” for failing to implement a Committee decision? It is noted here that a “good reason” is not synonymous with receiving a “satisfactory” rating from

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have to implement the treaty as being a contributory challenge to treaty body implementation. See Open Society, “From Rights to Remedies”.

<sup>52</sup> In “The legal status of decisions by human rights treaty bodies in national law”, published in the “UN Human Rights Treaty Bodies, Law and Legitimacy”, Helen Keller and Geir Ulfstein.

<sup>53</sup> Tomuschat, in “Human Rights: Between Idealism and Realism”, indicates that if a state disagrees with a Committee they must present good counter-arguments.

<sup>54</sup> Some states have persistently failed to cooperate with the HRCttee. The Democratic Republic of the Congo has never responded on follow-up to the 14 decisions found against it; Belarus has also persistently failed to cooperate with the Optional Protocol procedure as well as the interim measures procedure. No satisfactory responses have been provided in the over 40 adverse decisions against it. Other states have consistently failed to produce satisfactory responses, including Algeria (in 34 cases); Tajikistan (in 22 cases); Turkmenistan (in 5 cases); Ukraine (in 5 cases); Uzbekistan (in 32 cases); Russian Federation (in 27 cases); and Sri Lanka (in 16 cases). Sri Lanka failed to cooperate with the Committee following the Singarasa judgement of the Sri Lankan Supreme Court, which found inter alia that the ratification of the Optional Protocol was unconstitutional and that although Sri Lanka was bound by the Covenant in international law, the rights contained in it did not have “internal effect” as domestic legislation was not enacted to give effect to the treaty obligations. Since the *Singarasa* decision, Sri Lanka suspended cooperating with the Human Rights Committee on individual communications. For more on this see, “The Singarasa Case: Quis custodiet ? A Test for the Bangalore Principles of Judicial Conduct”, Nigel Rodley, Israel Law Review. There are 16 adverse cases against Sri Lanka and none have been implemented to date. However, it would appear that Sri Lanka has recommenced cooperation with the Committee recently, at least to the extent that it is providing submissions to the Committee prior to examination, which is to be welcomed.

<sup>55</sup> See A/61/40, Vol II, Annex VII.

the Committee. Thus, it is possible that the Committee may consider arguments by a state bona fide but still evaluate implementation as unsatisfactory. To date, the HRCtee has never explicitly indicated that a state provided good reasons for failing to implement a case. However, there are cases where it indicated that, as it was clear that the State did not intend to comply with a decision, the Committee considered that further discussion would be futile<sup>56</sup>. Some of these cases were cases where the state was clearly frustrating the procedure and others were cases where states did provide substantial arguments against the decision quoting from previous jurisprudence of the Committee. It may be that the Committee was persuaded by the arguments in some of these cases regarding them as “good reasons” but did not specifically express it. It is probable that a contradictory opinion of a regional body would be unlikely to amount to a “good reason” within such terms<sup>57</sup>. A further question is whether the Committee may consider domestic or constitutional constraints sufficient to justify failure to implement the specific remedy requested assuming some other alternative remedy is offered?<sup>58</sup> The flexibility or not for states to adapt treaty body

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<sup>56</sup> E.g., with respect to Bondarenko and Lyashkevich (Nos. 886/1999 and 887/1999), adopted on 3 April 2003, the Committee stated, that “Given the State party’s persistent failure to explain how its law relating to the notification of the date of execution and burial ground (CEC) and its implementation are consistent with the rights protected under the Covenant, and its failure to provide any remedy for the authors in these cases, the Committee considers that it serves no useful purpose to pursue the dialogue in these two cases and does not intend to consider these cases any further under the follow-up procedure”. In *N.T. v. Canada* (1052/2002) adopted on 20 March 2007, following detailed arguments by the state, the Committee regretted, “that the state party is not willing to accept the Committee’s Views, however, as it can see no useful purpose in pursuing a dialogue with the State party it does not intend to consider the communication any further under the follow-up procedure”. (A/63/40, Vol. II). In *Kavanagh v. Ireland* (819/1998), adopted on 4 April 2001, the Committee stated that, “while noting the author’s dissatisfaction with the remedy offered by the State party, the Committee does not intend to consider the matter any further under the follow-up procedure”. (CCPR/C/80/FU/1)

<sup>57</sup> During a dialogue with Portugal in July 2012, “Mr. Neuman, stated that regarding the *Correia de Matos v. Portugal*, No. 1123/2002, adopted on 28 March 2006 (in which the Committee found a violation of article 14, paragraph 3 (d)), “the res judicata force of the decision of the European Court of Human Rights was not at stake. The absence of any violation of the European Convention on Human Rights did not rule out the possibility that an offence might have been committed under the provisions of the National Constitution or of the Covenant – which had some provisions that were more stringent than those of the European Convention. There was no conflict between the obligations under the Convention and those under the Covenant.” (CCPR/C/SR.2936). Also in the *Singh v. France* (1928/2010), 19 July 2013, the State party reiterated that, taking into account security risks and the need to fight fraud, it did not intend to modify its domestic administrative regime, which it stated was found to comply with the European Convention on Human Rights. The Committee graded the response as a “C2”, i.e. considered it unsatisfactory as not relevant to the recommendation. (Follow-up report, 113<sup>th</sup> session). During a dialogue with Denmark in June 2016, Ms. Seibert Fohr questioned the delegation on why the State was waiting for the outcome of cases before the ECtHR (on whether decisions taken by the parliamentary Naturalisation Committee were in line with the European Convention on Human Rights) before it implemented the Committee’s decision in *Q. v. Denmark* (2001/2010), adopted on 1 April 2015. (CCPR/C/SR.3267)

<sup>58</sup> With respect to the implementation of judgements of the ECHR, which are legally binding, a *lex specialis* rule in article 41 of the Convention provides that [i]f the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. According to Andreas von Staden,



recommendations to suit their particular system, has not been discussed in its generality by the treaty bodies although it has arisen in some individual cases (see [Ristic v. Yugoslavia - Annex 1](#)). Interestingly, in the case of [Timmer v. the Netherlands \(Annex 1\)](#), the Committee itself, in the remedy section of the decision, invited the State party to either review the victim's conviction and sentence or implement "other appropriate measures capable of removing the adverse effects caused to the author...." In its reply, the state indicated that, as it is not possible to reopen a case on the basis of the Committee's Views, it struck off the offence from the author's criminal record, which was the subject matter of the decision. The Committee gave the state an "A" (top marks!) for its response.

27. Thus, with respect to the first question, in their deliberations on follow-up, the treaty bodies may wish to consider the extent to which some states may have "good reasons" for failing to implement or for implementing a decision with an alternative remedy to the one recommended. Do treaty bodies consider that the remedies suggested *must* be applied in order to comply with the decision (a failure to do so amounting to unsatisfactory follow-up) or could states substitute other remedies more easily applied in the domestic context and still arrive at satisfactory implementation?

28. As to the second question, how should states allow for the possibility to consider and give effect to decisions? The obligation to allow treaty body decisions "to take legal effect" may imply the existence of a mechanism of implementation. Some commentators<sup>59</sup> have suggested that (one of) the greatest stumbling blocks behind implementation of HRCttee decisions at the national level is the lack of a mechanism or enabling legislation to translate the human rights treaties into domestic law. The HRCttee itself stated that, "most states do not have specific enabling legislation to receive the views of the Committee into their domestic legal order."<sup>60</sup> It regularly points to the desirability of having a specific mechanism to implement its decisions<sup>61</sup>. It is aware that most states do not have legislation to "receive the Views of the Committee into their domestic legal order"<sup>62</sup> but refrains from suggesting in its General Comment what is meant by "receiving the Views". It does refer to the fact that some states provide for the payment of compensation to authors

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this means that if full restitution can not be achieved within the existing framework in the state—for example, due to the *res judicata* principle in court proceedings—then a respondent state was to be liable only for the payment of just satisfaction. See "Assessing the Impact of the judgements of the European Court of Human Rights on Domestic Human Rights Policies".

<sup>59</sup> For e.g. Moller and de Zayas, in "United Nations Human Rights Committee Case Law 1977-2008"

<sup>60</sup> CCPR/C/GC/33

<sup>61</sup> "The Committee is equally aware that the absence of specific enabling legislation is a crucial factor, which often stands in the way of monetary compensation to victims of violations of the Covenant, or the granting of other remedies based on the Committee's decision." (CCPR/C/GC/33) That argument was, for example, adduced by the Government of Austria in its follow-up reply on the decision in case No. 415/1990 (Pauger v. Austria) and by the Government of Senegal in its first follow-up reply on the decision in case No. 386/1989 (Koné v. Senegal)." A/51/40 and CCPR/C/AUT/CO/5

<sup>62</sup> General Comment No. 33 (CCPR/C/GC/33), "Obligations of states parties under the Optional Protocol of the International Covenant on civil and Political Rights."

pursuant to its decisions as an example of the type of legislation to which it is referring. “In any case, states parties must use *whatever means lie within their power* (emphasis added) in order to give effect to the Views issued by the Committee.” It would appear that this was added to indicate that the Committee does not believe that there is a legal obligation under the Optional Protocol to adopt “enabling legislation” and that there may be other means domestically to give effect to their decisions.<sup>63</sup> On some occasions, the Committee refers to General Comment No. 33 to encourage states to adopt measures to establish mechanisms and appropriate procedures to give full effect to its decisions.<sup>64</sup>

29. As mentioned above, to encourage implementation, around 5/6 years ago the HRCttee began requesting information from states, in the context of its reporting procedure, on general mechanisms established to implement its decisions. In its “lists of issues” (written questions) on state reports, the Committee began almost systematically asking states not only what they had done to follow-up on specific individual complaints but also what mechanisms were in place to implement decisions in general. The Committee has phrased this question in different ways from requesting the state to describe, “the procedure for implementing the Views”<sup>65</sup> of the Committee, to indicate whether “institutional and legislative measures have been taken to ensure the full implementation of Views”<sup>66</sup>, to requests for “what procedures are in place, in law and in practice” to implement the Views<sup>67</sup>. The Committee has sometimes received detailed responses to these questions but more often responses are vague, perhaps in some cases, reflecting the vagueness of the questions and the paucity of good models to point to as much as the lack of a mechanism.<sup>68</sup>

30. During the dialogue with states, where pertinent, the HRCttee continues to seek clarification on how the issue of implementation is carried out.<sup>69</sup> Questions often focus on one aspect of implementation. For example, the provision of compensation in a particular case rather than mechanisms in general: a natural tendency perhaps as the issue often revolves around specific decisions as being illustrative of a general problem. In appropriate cases, the Committee often recommends states to establish a specific procedure to ensure full compliance with its decisions. However, it has refrained from

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<sup>63</sup> CCPR/C/SR. 2588 (Oct 2008, Mr. Lallah)

<sup>64</sup> Concluding Observations, Canada 2015, CCPR/C/CAN/CO/5.

<sup>65</sup> List of Issues, Greece

<sup>66</sup> List of Issues, Korea

<sup>67</sup> List of Issues, Austria

<sup>68</sup> E.g., in response to a question by the Committee to Montenegro, in a list of issues on the existence of an implementation mechanism, it stated “Montenegro has so far not received a single Committee’s Views under the Optional Protocol. In case of receiving it, the Ministry of Foreign Affairs and European Integration would promptly submit the Views to the competent authority for dealing with complaints, which would act in order to implement the Committee’s Views in accordance with the law and in a timely manner. (CCPR/C/MNE/Q/1/Add., October 2014)

<sup>69</sup> See Mr. Shany’s comments during the dialogue with Greece in October 2015 below. During this exchange he also questioned the State on the institution responsible for monitoring the implementation of decisions, suggesting that a monitoring body would be a necessary forum for ensuring implementation. (CCPR/C/SR.3202)

describing what that procedure would look like. In the case of Peru, it did welcome enabling legislation adopted by the state in the 1980s (see Part II)<sup>70</sup>.

31. As to a mechanism to provide compensation, there is some guidance from individual members during the dialogue with states as to the requirements of such a mechanism. For example, in the dialogue with Greece in October 2015, on the provision of compensation, Mr. Shany stated that, “the procedures available to give effect to the Committee’s Views failed to provide a strong guarantee of the right to an effective remedy. The State party should ensure effective remedies, including the “*direct*” (emphasis added) payment of compensation, where appropriate and necessary<sup>71</sup>. It is probable that in this context the word “direct” did not mean that compensation should be *automatically* awarded, following a finding of a violation by the Committee, but that a procedure should be in place to allow victims to apply for compensation, possibly through the domestic courts, on the basis of the decision. Such a procedure should be effective and thus not burdensome. Some scholars have suggested that the ability to apply for compensation, even if it were not provided in every case, might be an effective mechanism.<sup>72</sup> It may be that this issue demands further discussion within the treaty bodies.

32. Mr. Shany questioned the effectiveness of the State’s compensation procedure with a five-year statute of limitations, lengthy delays in court proceedings and which, in at least one case<sup>73</sup>, compensation had been denied to the victim. In response, the representative of the state argued that by providing authors of complaints with legal avenues for reparation, and by giving all due consideration to the Views of the Committee, the state believed that it met those obligations. It stated that the Optional Protocol “contained no provision granting just satisfaction” and that “the Committee’s Views could not be invoked to quash judgments by the domestic courts or acts by the domestic authorities. A procedure for incorporating Views into the Greek legal order was therefore required.” Greece is among several states to have made these arguments. The latter argument on quashing or reviewing final judgements of national courts has given rise to *res judicata* arguments by other states but some have managed to overcome this challenge (See Part II “C. Reopening/review of criminal and/or civil proceedings”).

33. Other treaty bodies, rarely request general information on mechanisms of implementation of decisions, preferring to limit their questions to the implementation of specific cases. While the CRPD has a particular article on

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<sup>70</sup> Case of *Allevana v. Peru* (202/1986) - legislation later rescinded

<sup>71</sup> CCPR/C/SR.3204

<sup>72</sup> “It would not appear to be in contravention of a state’s obligations to make the award of compensation subject to the filing of a claim by the author in a national court; that then may or may not end with the same outcome as the Views. But, obviously in such a case, a procedure before the courts should be available.” See “The legal status of decisions by human rights treaty bodies in national law”, published in the UN Human Rights Treaty Bodies, Law and Legitimacy”, by Helen Keller and Geir Ulfstein.

<sup>73</sup> In *Georgopoulos et al. v. Greece* (1799/2008), in which the local court had not only absolved the alleged perpetrators of criminal responsibility but had rejected the Committee’s position that the evictions were unlawful, thus denying the author access to any form of reparation. (CCPR/C/SR.3202)

implementation (article 33)<sup>74</sup>, responses to date tend to relate in general terms to implementation of the Convention rather than the CRPD's decisions per se. Thus, while the information herein also refers to implementation mechanisms of the CAT and ICERD, most responses received to date were under the HRCttee procedures.<sup>75</sup>

34. To allow states to meaningfully and effectively implement treaty body decisions it is required that: 1. the provisions of the (parent) treaty are in some way translated into domestic law; and 2. there is some mechanism/s in place to allow these decisions to take legal effect. What kind of mechanisms and/or procedures should be put in place? What do robust and effective mechanisms look like? Those adopted by states so far are explored below in Part II.

## **PART II**

### **Existing mechanisms/procedures of implementation and their effectiveness**

35. States parties have adopted different types of mechanisms and procedures to implement treaty body decisions (see Annex II for the legislation and/or explanation of these mechanisms). Some have established more than one and others, rather than establishing a specific procedure, have relied on pre-existing procedures to provide remedies following adverse treaty body decisions. It is observed in annex 1 that many decisions have been followed up by informal or *ad hoc* means.

36. I have identified *six* different types of domestic mechanisms which have been established by states: Mechanisms/procedures of general implementation; Mechanisms establishing an obligation or empowering authorities to implement; Mechanisms providing for reopening/review of proceedings (civil and/or criminal); Mechanisms providing for compensation; Mechanisms implementing expulsion cases; and Mechanisms of friendly settlement.

#### A. Mechanisms/Procedures of General Implementation

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<sup>74</sup> Article 33: National implementation and monitoring: "1. states parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels. "2. states parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, states parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights. "3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process."

<sup>75</sup> This is understandable given the sheer number of HRC Views and the HRC's focus on the general legal infrastructures within states.

37. **Argentina, Australia, Chile, Czech Republic, Costa Rica, Denmark, Georgia, Germany, Korea, Kyrgyzstan, Lithuania, Peru, Serbia, Spain, Sweden, and Uzbekistan**, have established mechanisms of general implementation, normally established by the executive, except in the case of Georgia and the Czech Republic which have been established by legislation. These mechanisms largely fulfil a monitoring, advisory, and coordination role to implement treaty body decisions. See Annex II “A” for the description or legislation in each state mentioned above.

38. These mechanisms are often of a ministerial/inter-ministerial nature and have in whole or in part the following functions, to: forward decisions to the responsible institutions/ministries/departments/parliamentary bodies; review, coordinate and monitor implementation of treaty body decisions; analyse what action needs to be taken and make proposals; propose measures of implementation to appropriate bodies; provide translations of the decisions; inform all relevant authorities of the decisions, including National Human Rights Institutions (NHRIs), Bar Associations, Ombudsmen, agencies, Ministries and Courts involved in the case; provide summaries of decisions; provide administrative notes of any changes that may need to be established as a result of the case; report to the treaty bodies about the action taken; monitor compliance with other human rights bodies like the Universal Periodic Review (UPR) procedure of the Human Rights Council; and publish decisions. This type of mechanism is more or less developed depending on the State.

39. Interestingly, the procedure set up in **Argentina** resulted from a commitment made under the UPR procedure of the Human Rights Council. In **Lithuania**, the Government’s representative to the European Court of Human Rights (ECtHR) coordinates the implementation of the HRCttee’s decisions and in the **Czech Republic**, “the Office of the Government Agent” coordinates the implementation of the ECtHR Court’s judgments and the HRCttee’s decisions. There is no reference in the Czech law to the decisions of other treaty bodies. In **Denmark**, the procedures for acting on HRCttee’s decisions are the same as that for judgements of the ECHR.

40. In its replies to the list of issues, **Georgia**<sup>76</sup> assured the HRCttee that the wording of the Statute relating to “decisions of international human rights bodies”, applies to the decisions of the treaty bodies. The Committee acknowledged that procedures to implement treaty body decisions in **Georgia**<sup>77</sup> are in place but that, “a mechanism for full implementation of the Views of the Committee does not yet exist”<sup>78</sup>.

41. In a recent dialogue with the HRCttee, **the former Yugoslav Republic of Macedonia**, indicated that a similar mechanism to the inter-ministerial bureau specifically responsible for overseeing implementation of judgments of the ECtHR could be considered to oversee implementation of the

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<sup>76</sup> Replies to list of issues, March 2014. (CCPR/C/GEO/Q/4/Add.1)

<sup>77</sup> CCPR/C/GEO/CO/4, July 2014

<sup>78</sup> It is assumed that the Committee was anticipating the establishment of the mechanism referred to in « B » and adopted subsequently.

Committee's recommendations<sup>79</sup>. Some states, including **Portugal**<sup>80</sup>, stated that they have no mechanism as they have either received few or no decisions to date.

42. **Sweden's** general implementation mechanism works successfully in tandem with its mechanism on expulsions, where the majority of decisions have been implemented (see below) and **Latvia**, while it has not yet established a permanent body, it did set up a Working Group, which contributed to the successful implementation of one of the small number of cases found against it.<sup>81</sup>

43. The HRCttee expressed regret in its concluding observations in the case of **Spain** and **Korea** due to the "absence of a more specific procedure" and in the case of the latter to its failure to implement its decisions except in one case. In **Uzbekistan**, the HRCttee regretted the "lack of effective measures and procedures in law and in practice", due to the failure to give effect to its decisions<sup>82</sup>. The Committee welcomed the procedures in **Costa Rica**<sup>83</sup> and **Kyrgyzstan**<sup>84</sup> but regretted the fact that in Costa Rica the mechanism itself had not so far been implemented and in Kyrgyzstan there was a lack of clarity on the role of the Coordination Council.

44. **Bulgaria**, also has a Council of Ministers that coordinates its responses to human rights bodies. Currently, this only relates to the implementation of concluding observations of the treaty bodies but it is expected that implementation of complaints will shortly be added to its mandate. In fact, this body successfully recently coordinated the provision of compensation in one CAT case, [Keremedchiev v. Bulgaria \(257/2004 – see Annex 1\)](#) and three CEDAW cases, [Jallow. v. Bulgaria \(32/2011– see Annex 1\)](#), [V.K. v. Bulgaria \(20/2008 – see Annex 1\)](#) and [V.P. v. Bulgaria \(31/2011 – see Annex 1\)](#).

45. Thus, mechanisms of general implementation do exist in a number of states and have been welcomed by the HRCttee. It will be observed that many of these mechanisms have been established recently (in the last five years) and that some of the states concerned have received a limited number of decisions. Thus, it is too early to demonstrate their effectiveness. The HRCttee has called into question the effectiveness of some in ensuring implementation. This would appear to relate to the rather narrow functions of

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<sup>79</sup> Summary records, July 2015. (CCPR/C/SR. 3170)

<sup>80</sup> At least one member of the HRCttee did not appear to consider that the receipt of a number of treaty body decisions should be a prerequisite to establishing such a mechanism. (CCPR/C/SR.2936)

<sup>81</sup> *Ignatane v. Latvia* (884/1999), adopted on 25 July 2001.

<sup>82</sup> CCPR/C/UZB/COB/4. The response regularly received from Uzbekistan, is similar to that in follow-up to *Lyashkevich* (1552/2007), adopted on 23 March 2010, that, "on 27 December 2010, the Committee's Views in the present case was examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by the decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to a defense had been violated were groundless".

<sup>83</sup> CCPR/C/CRI/CO/6

<sup>84</sup> CCPR/C/KGZ/CO/2

some of these mechanisms as much as to the fact that alone they are inadequate, lacking the teeth to implement all manner of decisions.

46. A recent UN publication on “national mechanisms for reporting and follow-up”<sup>85</sup> supports the establishment of such mechanisms and highlights their optimum criteria: that it be standing; of a ministerial or inter-ministerial nature and institutionally separate; have a comprehensive formal legislative or policy mandate; an intergovernmental understanding of its role and political ownership at the highest level; and should have dedicated, capacitated and continuous staff. States wishing to establish such a mechanism may wish to consider these criteria, as well as the functions abovementioned, as applied by other states.

47. Both the Council of Europe’s Committee of Ministers and the Inter-American Court have also recommended similar mechanisms: the former a “national coordinator of judgements” and “effective dialogue and transmission of relevant information”<sup>86</sup> and the latter an executive agent responsible for carrying out implementation.<sup>87</sup> Assuming such mechanisms are effectively implemented and supported by other more specific mechanisms (as described below) they may “penetrate the internal workings of administrative institutions and serve as functioning channels for compliance”.<sup>88</sup>

#### B. Legislative, or constitutional provisions establishing a general obligation

48. Other states (**Czech Republic, Kyrgyzstan, and Peru** (since repealed)) have established legislative or constitutional provisions on the general implementation of treaty body decisions, giving them legal status in domestic law. These mechanisms differ from those under “A” above, as here they appear to oblige or at least empower the authorities to implement them. See Annex II “B” for the provisions.

49. The mechanisms in the **Czech Republic** and **Kyrgyzstan**<sup>89</sup> are relatively new (2011 and 2010, respectively) and appear comprehensive. The Czech Republic’s legislation creates a dual mechanism that covers the provision of information and coordination (as mentioned under “A, General Measures of Implementation” above) but appears to incorporate a requirement under the legislation to implement HRCttee decisions (art. 6 (1)) in a similar way as ECrtHR judgments. It states that public authorities “shall take all necessary measures to end violations” (art. 4). The Kyrgyzstan constitutional provision, article 41 (2), states that, “the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage”.

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<sup>85</sup> “National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms”, Published by OHCHR in 2016.

<sup>86</sup> Committee of Ministers Recommendation 2008 (2)

<sup>87</sup> *Molina Theissen v. Guatemala*, Monitoring Compliance with Judgement, series C No. 108 (November 16, 2009)

<sup>88</sup> From “Rights to Remedies”, Open Society Foundation.

<sup>89</sup> The OHCHR through a technical cooperation project assisted Kyrgyzstan in establishing this legislation.

50. In the **Czech Republic**, the same law is applied to judgments of the ECtHR. Most of the decisions of the HRCttee against the Czech Republic relate to restitution of property claims. The State party has provided compensation on an *ad hoc* basis in some of these cases (see Annex 1). On 26 March 2007<sup>90</sup>, the State party submitted that to provide all authors with a remedy would involve the modification of legislation to remove the nationality condition (*inter alia* the offending part of the legislation). The state claimed that this would be unlikely to be supported by Parliament, as such an amendment would have to be retrospective, thereby opening the entire restitution process. Despite the Committee's consistent requests to grant reparation in these cases, including in its concluding observations of July 2013<sup>91</sup>, no action has yet been taken. This new mechanism has not been applied to these property cases. The Committee would doubtless welcome the application of this new law to implement these long-standing cases or any other means at the states disposal to finally follow-up on these decisions.

51. The Czech Constitutional Court (art. 87) may also implement decisions of "international tribunals" but it is not clear whether the treaty bodies would be so regarded.

52. **Until 2004**, the Constitutional Court of **Peru** (Tribunal Constitucional Peruano) considered that the Committee's decisions were definitive international judicial decisions that must be complied with and executed in accordance with article 40 of Law No. 23,506 and article 101 of the Constitution. Treaty body decisions were thus given the status of domestic judgments. This law was welcomed by the Committee in the [Avellanal case \(202/1986 - see Annex I\)](#), in the remedy section of the decision, the "Committee welcomes the State party's Commitment, expressed in articles 39 and 40 of Law No. 23,506, to co-operate with the Human Rights Committee, and to implement its recommendations." It has also been referred to in HRCttee literature as an example of good practice. However, it is unclear whether it was much applied. It is possible that it was applied to pay the first Inter-American Court of Human Rights decisions against Peru (Neira Alegria, Castillo Páez, Loayza Tamayo) but there is no evidence that it was ever applied as follow-up to treaty body decisions. The good examples of satisfactory replies prior to the abrogation of this law relate to releases from prison rather than compensation (see Annex II).

53. Law no. 28,237, which replaced law no. 23,506 in 2004, makes a distinction between "international organizations" with reference to the HRCttee and Inter-American Commission (article 114) and other international "judicial bodies" (Art. 115). Article 114, provides that individuals can take cases to the treaty bodies, while article 115 provides that decisions of "judicial bodies"/supranational courts, including international tribunals and the Inter-American Court are regulated by law no. 27,775. Law no. 27,775 provides that rulings have immediate and binding effect on all

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<sup>90</sup> AR/62/40

<sup>91</sup> CCPR/C/CZE/CO/3



state agents, including the judiciary and the “Ministerio Publico”. It is unfortunate that article 115 of law no. 28,237 and law no. 27,775 do not apply to decisions of the treaty bodies (or decisions of the Inter-American Commission), as they would have continued to have legal status in domestic law. However, these laws have not been wholly positive as they relate to decisions of the Inter-American Court, because they only refer to the provision of pecuniary compensation and the approach of the Inter-American system is to recommend “integral reparation”<sup>92</sup>. Also, here is an apparent lack of clarity internally on the entity in charge of the payment. Peru has managed to get around issues of legal status of treaty body decisions recently by developing a procedure to provide compensation following a decision of the CEDAW and the HRCttee (see “D” on Compensation Mechanisms and Annex I for the cases).

54. The question remains as to whether the new mechanisms in the Czech Republic and Kyrgyzstan will be implemented effectively. The HRCttee noted that the legislation in the Czech Republic had not yet been used to implement its decisions. In Kyrgyzstan, the HRCttee was concerned in March 2015 that, “while it welcomed article 41 (2) of the State party’s Constitution, it was concerned about the failure to implement the Views adopted by the Committee and about allegations that asylum seekers continue to be returned to their home countries notwithstanding the Committee’s Views on the matter”. Follow-up is currently on-going in the case of [Moidunov and Zhumabaeva v. Kyrgyzstan \(1756/2008 - see Annex 1\)](#). In [Askarov v. Kyrgyzstan \(2231/2012\)](#)<sup>93</sup>, adopted on 31 March 2016 - see para 66 below), article 41 (2) of the Constitution was tested. It was positive to the extent that the author was granted a new trial on the basis of the HRCttee’s decision, but very disappointing, as this retrial ended in the Chui Regional Court upholding the original verdict on 24 January 2017.

55. On the face of it, these new mechanisms providing a general legal obligation to implement decisions should smooth the way to implementation. As opined by some scholars, “probably the most effective way to facilitate implementation of the Committee’s decisions would be the adoption of appropriate enabling legislation in all states parties ... giving the decisions ... legal status in the domestic legal system....”<sup>94</sup>. Giving legal status to decisions domestically can facilitate the provision of a variety of different remedies: making implementation more efficient, effective and less cumbersome.

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<sup>92</sup> This relates to “Restitution; compensation; satisfaction; rehabilitation; measures to ensure truth and justice; guarantees of non-repetition and expenses and costs”. Information from Jorge Humberto Meza Flores, Human Rights Specialist, Inter-American Commission on Human Rights, OAS.

<sup>93</sup> The HRCttee found that a jailed political activist and journalist was arbitrarily detained, held in inhumane conditions, tortured and mistreated, and prevented from adequately preparing his trial defence. It found violations of articles 7 (torture), read separately and in conjunction with article 2 (3) (remedy), and articles 9 (1), 10 (1) (inhuman conditions of detention and lack medical care) and 14 (3) (b) (did not have adequate time and facilities to prepare his defence) and (e) (in ability to call and question witnesses) of the Covenant.

<sup>94</sup> See Moller and de Zayas, in “United Nations Human Rights Committee Case Law 1977-2008”, Engel pub.

### C. Reopening/review of criminal and/or civil proceedings

56. A number of states (**Belarus, Czech Republic, Finland, Hungary, Lithuania, Norway, Poland, Portugal, Russian Federation, Serbia, Tajikistan, and Uzbekistan**) provide for reopening/review on the basis of treaty body decisions in civil and/or criminal cases, and most before the Supreme or Constitutional Court. In **Georgia**, amendments to the Code of Criminal Procedure are currently before Parliament to allow for reopening of cases pursuant to decisions of the HRCttee, CAT and CEDAW. See Annex II below “C” for the legislation or explanation thereof.

57. In at least two cases (**Lithuania, Norway**), such reviews are only possible in the case of HRCttee decisions rather than treaty body decisions in general. In **Norway**, this is as a consequence of the incorporation of the ICCPR in the Norwegian Human Rights Act. This situation has created many disputes giving rise to legal controversy over the hierarchy of other human rights instruments, including the CEDAW, in Norway.<sup>95</sup>

58. Some such legislation refers to decisions of the “Human Rights Committee” but more often the application to the treaty bodies is implied through general language: “a body protecting human rights under a treaty”, “an international authority”, or “international jurisdiction”. Sometimes, the treaty body decision is considered “changed circumstances”, or “new evidence”. **Portugal**, during a dialogue with the Committee<sup>96</sup> referred to the possibility of reopening proceedings under its criminal code as the decision could be considered either a “new fact” or a “fact that is contradictory to other facts in a later decision”. The phrase “international bodies” could, the State party believed, be considered *prima facie* to cover treaty body decisions. It was also suggested that the same procedure as the one to follow-up on judgments of the ECtHR could be used for follow-up to the treaty bodies.

59. For some states (**Finland, Hungary, Lithuania, Norway**<sup>97</sup>, **Poland, Portugal, and the Russian Federation**), the same law as that which applies to judgments of the ECtHR applies to the treaty bodies or only the HRCttee.

60. In **Finland**, the application of the procedure of “extraordinary appeal” to the Supreme Court on the basis of the HRCttee’s decision to reopen the case of [Kivenmaa \(412/1990 - see Annex I\)](#) was unsuccessful. In this case the Supreme Court decided not to annul the criminal conviction and sentence.

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<sup>95</sup> For more information on this issue see for example, “Womens’ Human Rights: CEDAW in International, Regional and National Law”, published by Anne Hellum and Henriette Sinding Aasen.

<sup>96</sup> Dialogue July 2012. (CCPR/C/SR. 2936)

<sup>97</sup> Norway is a dualist country, but several international human rights conventions, among them the European Convention on Human Rights (ECHR) were incorporated and given preference over Norwegian statutory law through the Human Rights Act of 1999. The result of this is that the ECHR and case law from the European Court of Human Rights (ECtHR) now play an important role in the interpretation of Norwegian law, not only as relevant sources of law, but as sources of significant weight. The Norwegian Constitution is *lex superior* to the Human Rights Act, and the relevance of international human rights on the level of Norwegian constitutional law is not clear.

However, the Supreme Court did reverse the judgment of the Court of Appeal in *Z. v. Finland*, ECtHR, 25 February 1997, following a decision of the ECtHR under the same legislation.

61. In **Hungary**, under its criminal procedure code of 1998 (amended 2012), there is a possibility of judicial review in the event that the conduct of the proceedings or the final decision of the court violated a provision of an international treaty. There is also a measure under the Constitutional Court, which allows cases to be reopened, as an exception to the *res judicata* principle if, “the circumstances have changed fundamentally in the meantime”. To date, this procedure has only been used with respect to decisions of the ECtHR<sup>98</sup> and not yet tested in follow-up to treaty body decisions.

62. **Uzbekistan, Belarus and Tajikistan** have procedures where treaty body decisions can be reviewed by the Supreme Court to ascertain whether any error had been made on the basis of new evidence. For example, in **Tajikistan** the Supreme Court and the Prosecutor General re-examine the case based on the treaty bodies’ decision and gives their view to a Government Commission. In addition, a procedure known as a “supervisory protest” may also be taken in certain circumstance. However, the effectiveness of these procedures may be called into question, as despite the large number of adverse cases in the states concerned, no HRCtee decisions have been implemented under these procedures.

63. In the **Russian Federation**, judgements of the ECtHR are specifically mentioned in Criminal Procedure Code, as “new evidence” on the basis of which cases may be reopened.<sup>99</sup> Although the decisions of the treaty bodies are not specifically mentioned, the Constitutional Court (Decision No. 1248-0 of 28 June 2012) considered that treaty body decisions would constitute such “new evidence”. Despite the Constitutional Court’s ruling, and the “comprehensive analysis”<sup>100</sup> of HRCtee decisions, the State party has provided no satisfactory remedies for treaty body decisions. In March 2015, the Committee expressed its concern, “at the State party’s failure to implement the Views adopted by the Committee under the Optional Protocol, despite decision No. 1248-0 of 28 June 2012 of the Constitutional Court designed to facilitate their implementation and the lack of clear information

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<sup>98</sup> Constitutional Court Decision 4/2013 (II.21.), in which the Constitutional Court overruled its previous decision on criminalising the use of the five pointed red star as a totalitarian symbol with regard to the decision of the ECtHR (*Vajnai v. Hungary*, Application No. 33629/06).

<sup>99</sup> On 14 December 2015, President Vladimir Putin signed a new law, which some experts’ claim violates the Russian Constitution. While the Constitution, in Article 15, point 4, states: “If an international treaty of the Russian Federation stipulates other rules than those stipulated by [Russian] law, the rules of the international treaty shall apply. The new law states that the Constitutional Court should be guided by the principle of “the supremacy and the supreme legal force of the Russian Constitution” when determining whether Russia should comply with judgments issued by such courts. See <http://www.qil-qdi.org/russian-constitutional-court-execution-la-carte-ecthr-judgments/>  
<http://www.rferl.org/a/russian-law-on-rejecting-human-rights-courts-violates-constitution-experts-say/27432125.html>

<sup>100</sup> Replies to the list of issues, 2015. (CCPR/C/RUS/Q/7/Add.1)

regarding the existence of efficient mechanisms and legal procedures for ensuring the full implementation of the Committee's Views and their operation in practice." It recommended that it should take "all institutional and legislative measures to ensure that mechanisms and appropriate procedures are in place to give full effect to the Committee's Views".<sup>101</sup>

64. Under Article 304 of the Code of Arbitration Procedure, cases may be reopened after a finding of the ECtHR<sup>102</sup>. Also, under 46 (3) of the Constitution reopening is possible. It is not clear whether these procedures would apply to decisions of the treaty bodies.

65. In **Serbia**, an extra-ordinary remedy after a case becomes finally adjudicated is possible. It is referred to as "an application for the protection of legality". This procedure was used in the CAT case of [Nikolic \(174/2000 - see Annex I for information on compensation provided\)](#), where the CAT found violations for the failure to precede to an impartial investigation into the cause of death of a detainee in custody. The CAT *inter alia* requested information on the initiation and results of such an impartial investigation. The Ministry of Justice sent the CAT decision to the Office of the Public Prosecutor for action, who sent it to the District Court for a new forensic report to determine the circumstances of the deceased's death. Following a refusal by the District Court, the Public Prosecutor applied to the Supreme Court for a "protection of legality" which was ultimately refused. Interestingly, the criminal procedure code which sets out this process (see Annex II) refers to the procedure as a follow-up to Constitutional Court decisions and judgments of the ECtHR only so it is unclear on what basis the decision of the CAT was received. This case demonstrates the complicated nature of implementing treaty body requests to reopen or review final domestic decisions. Even in a situation where the State party has a procedure in place to reopen or review a case on the basis of a decision, what can the executive branch do, without being accused of interference, if the judiciary does not take on board the treaty bodies recommendation?

66. In **Kyrgyzstan**, Article 384 part 1 of the Code of Criminal Procedure of Kyrgyzstan states that court sentences, orders and rulings, which already have entered into legal force, may be canceled and proceedings may resume on a new or newly discovered facts. The findings of violation/s by international bodies are one of the grounds to reopen a criminal case on new circumstances under part 2-1 paragraph 3 of the same Article. This was confirmed by the Supreme Court in its judgement of 12 June 2016<sup>103</sup> in the case of [Askarov \(2231/2012, adopted on 31 March 2016\)](#), in which the Court abolished the sentences against the victim and transferred the case to the Chui Oblast Court for a new examination on appeal<sup>104</sup>. Kyrgyzstan's general obligations, under

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<sup>101</sup> Concluding Observations of March 2015. (CCPR/C/RUS/CO/7)

<sup>102</sup> For example, *Rusatomet Ltd. v. Russia* case (no. 61651/00), 14 June 2005.

<sup>103</sup> Supreme Court Decision, Biskek, Kyrgyz Republic, No. 4-0743/16 Criminal Case. This case was also published by the HRCtee in a press release on 21 April 2016.

<sup>104</sup> Unfortunately, this retrial ended in the Chui Regional Court upholding the original verdict on 24 January 2017.

article 41 (2) of the Constitution (as mentioned in paras. 49 and 54 above) to implement treaty body decisions was also referred to in this Supreme Court decision.<sup>105</sup>

67. For two years, **Slovakia** had a provision to reopen cases. An amendment to the Act on the Constitutional Court of the Slovak Republic introduced such a procedure in 2000. Under this procedure, if the HRCttee were to submit to the attention of the Slovak government a decision alleging violations of provisions of the ICCPR, the Government was obliged to submit the case without delay to the Constitutional Court. The Court was to treat this complaint as an individual complaint (§ 75 para 3). However, the fact that this procedure was viewed as possibly leading to a breach of the principle of *res judicata* led to its repeal. It was applied in the case of, [Matyus v Slovakia \(923/2000, adopted on 22 July 2002 – see Annex 1\)](#) but was suspended, as the State party had taken the action rather than the natural or legal persons themselves, thus failing to comply with a rule of the procedure.<sup>106</sup> In its concluding observations, the Committee requested Slovakia to consider establishing a mechanism to ensure that the Committee's recommendations and Views are widely disseminated, and implemented.<sup>107</sup>

68. In its follow-up to decision [J. O. \(1620/2007, adopted on 23 March 2011\)](#), **France** specifically stated that the Criminal Procedure Code does not provide for a review of final convictions on the basis of a decision by the Human Rights Committee, unlike judgments of the ECtHR, which have jurisdictional value.<sup>108</sup> This situation would appear to apply to decisions of other treaty bodies as well.

69. Other states have also specifically stated that they cannot reopen cases after a decision of a treaty body. **The Netherlands** stated, that the Views of the treaty bodies do not appear in the exhaustive list of criteria set forth in article 457 of the Code of Criminal Procedure and therefore do not provide a

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<sup>105</sup> In two cases, *Krasnov v. Kyrgyzstan* (1402/2005), adopted on 29 March 2011 and *Gunan v. Kyrgyzstan* (1545/2007), adopted on 25 July 2011, attempts made to reopen cases pursuant to the Committee's Views were rejected. In at least the later case, the decision by the Supreme Court not to reopen the matter was made on 11 August 2014, before the Supreme Court decision in *Askarov*.

<sup>106</sup> ILA Final Report, Berlin Conference (2004): International Human Rights Law and Practice.

<sup>107</sup> CCPR/C/SVK/CO/4

<sup>108</sup> See follow-up response in A/67/40, Vol I. In his reply, the author indicated that the failure to provide him with the same remedy he would receive following a ruling by the ECtHR introduces a baseless distinction between the State party's international obligations under comparable legal instruments. In its replies to the list of issues July 2015, France indicated that while there is no specific procedure to give binding effect to the Committee decisions, it does seek to draw all possible lessons from them. Other states have also established similar mechanisms for regional bodies only e.g. San Marino by Article 2 of Law 27 June 2003 no. 89 modified Article 200 of the Code of Criminal Procedure by introducing amongst the grounds for revision of judgments and penal decrees of condemnation (*decreti penali di condanna*) the following:

“d) if the European Court of Human Rights has found that a judgment has been rendered in breach of the European Convention on Human Rights or its Protocols and the serious adverse consequences of such judgment can only be removed through its revision”.

basis for reopening a final judgment<sup>109</sup>. **Greece** stated that, “... in Greek legislation, there is no provision allowing the reopening of domestic judicial proceedings, as a follow-up to the Views adopted by the Committee on an individual complaint.” The laws relating to the ECtHR to reopen criminal cases do not apply to the HRCtee. Laws No. 2865/2000 (which entered into force on 19 December 2000) and No. 3060/2002 (which entered into force on 11 October 2002) amended Article 525 of the Code of Criminal Procedure and provide for the reopening of proceedings after violations established by the ECtHR. Greece explained, during its dialogue with the HRCtee in October 2015, that, “to provide an effective remedy to victims does not imply the certainty of a favourable outcome for the author. Any other interpretation would result in a substitution for the domestic judge, and run counter to the principle of the subsidiarity of the Views”<sup>110</sup>.

70. **Ukraine** has clearly indicated that it does not regard treaty bodies as an “international tribunal” for the purpose of reopening cases. In [Butovenko v. Ukraine \(1412/2005, adopted on 19 July 2011\)](#) a request by the author to the Supreme Court to re-examine his criminal case, in light of the Committee’s decisions, and relying on article 400-12, paragraph 1, subparagraph (2) of the Code of Criminal Procedure of Ukraine, was dismissed by the Supreme Court on the grounds that the Committee is not regarded as an “international tribunal”. In July 2013, the Committee recommended the state to review its legislation to ensure all Views are implemented. It stated that it should take all necessary measures to establish mechanisms and appropriate procedures, including the possibility of reopening cases, reducing prison sentences and granting ex gratia compensation, to give full effect to the Committee’s Views<sup>111</sup>. The Committee would surely welcome a decision by Ukraine to adopt the same approach to the implementation of treaty bodies as it has to the implementation of ECtHR decisions, for which it passed comprehensive implementation in 2006 (amended in 2011).

71. Domestic courts in a number of states have also frequently rejected any binding quality of treaty body decisions, thus preventing them from reopening municipal decisions.<sup>112</sup> For example, in [Kavanagh](#)<sup>113</sup>, the author took his case to the Supreme Court to have it reopened on the strength of the HRCtee’s decision<sup>114</sup>. The Irish Supreme Court stated that “the notion of the “Views” of a Committee even of admittedly distinguished experts on international human rights, though not necessarily lawyers, could prevail against the concluded

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<sup>109</sup> *Timmer v. the Netherlands*, CCPR/C/111/D/2097/2011.

<sup>110</sup> *Kalamiotis*, CCPR/C/112/R.3.

<sup>111</sup> CCPR/C/UKR/CO/7

<sup>112</sup> *Austria* (Supreme Court in *Perterer v. Land Salzburg and Austria*, Appeal judgment, 10b8/08w; ILDC 1592 (AT 2008) 6 May 2008); *Sri Lanka* (*Singarasa v. Attorney General*, Application for judicial review, SC Spl (LA) No. 182/99; ILDC 518 (LK 2006), 15 September 2006); and *Spain* (Constitutional Court, *José Luis PM v. Criminal Chamber of the Supreme Court*, Constitutional appeal (recurso de amparo), ILDC 1794 (ES 2002), 3 April 2002).

<sup>113</sup> *Kavanagh v. Governor of Mountjoy Prison* (2002) IESC 13 (2002); ILDC 488 (IE 2002); 132 ILR 380.

<sup>114</sup> *Kavanagh v. Ireland* (819/1998), adopted on 4 April 2001.

decision of a properly constituted court is patently unacceptable”.<sup>115</sup> As surmised by one scholar, enforcement “can lead to conflict between an ... international legal order and state sovereignty or constitutional democracy.”<sup>116</sup>

72. Thus, a number of states have mechanisms for reopening proceedings after an adverse finding by a treaty body, but they have been little used, and to date have not proved to be very effective. In some cases, the absence of a specific reference to the treaty bodies *per se* leaves it open to question whether decisions of these bodies would be considered to fall within the terms of the legislation. Only time will tell. This type of mechanism, its absence or implementation, clearly raises more complications for states than other mechanisms. Some states have made reference to the non-binding nature of treaty body decisions, as the reason behind the absence of legislative mechanisms to revise or set aside final domestic court decisions. However, in the absence of such legislation, the possibility of a clash between decisions of national courts and those of treaty bodies is a real one.

#### D. Compensation mechanism/measures

73. In some states (**Austria, Colombia, Denmark, Finland, Greece, Kyrgyzstan, Lithuania, Peru, Serbia**) compensation may be provided as follow-up to a treaty body decision by constitutional or legislative provision, judicial decision or ministerial order.

74. The most acclaimed of these procedures is the **Colombian** example where compensation has been provided to authors in a number of HRCtee cases<sup>117</sup> (see Annex 1) through Law 288. These agreements are normally evidenced by signed settlements with the authors. This procedure applies to “international human rights bodies” in general including decisions of the Inter-American Commission. In the Inter-American system the application of this law has been generally successfully applied<sup>118</sup>, albeit sometimes slow adding extra burdens on the victims and only providing for compensation. The quantum of compensation is often less than that received if submitted to the Inter-American Court. Thus, in certain cases victims dissatisfied with the compensation proposed by the State under this procedure request the Commission to submit their case to the Inter-American Court. In some cases, the victims have taken advantage of the meetings set up to provide compensation under this law to successfully request other measures of redress

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<sup>115</sup> It should also be noted that Ireland is a dualist state and the ICCPR is not incorporated into Irish law. According to the Supreme Court, the terms of the Covenant, “cannot prevail over the provisions of the Offences against the State Act, 1939 or of a conviction by a court established under its provisions.”

<sup>116</sup> Gianluigi Palombella, in “The Rule of Law Beyond the State: failures, promises and theory – International journal of constitutional law”.

<sup>117</sup> Suarez de Guerrero v. Colombia (45/1979), Herrera Rubio v. Colombia (161/1983), Delgado Paez v. Colombia (195/1985), and Bautista v. Colombia (563/1993). See Annex I for more information on these cases.

<sup>118</sup> According to an Inter-American Commission report of 1999, the Committee of Ministers issued nine favourable decisions under this law opening the way for compensation and other cases remained open which the State was implementing through this law.

including rehabilitation<sup>119</sup>. Under this framework, a Ministerial Committee was established, which examines the Committee's decisions, and recommends whether compensation should be paid to victims. The requirements for application of Law 288, include that there is an express written decision of an international body, which is final and indicates that compensation should be paid; and there is a favourable opinion regarding compliance with the decision, issued by the Ministerial Committee composed of the Ministers of Interior and Justice, Foreign Affairs and Defence.

75. While this procedure has been justifiably commended<sup>120</sup>, on a number of occasions it has failed to be applied to cases of the HRCttee because the remedy of compensation was not specifically mentioned in the Committee's decision<sup>121</sup> (a problem easily rectified for future decisions) or because it did not meet "the factual and/or legal requirements provided in the Constitution and the applicable international treaties". Thus, the law does not provide *automatic* compensation<sup>122</sup> following a decision. For example, in the case of [Chaparro, Crespo, Arroyo and Torres v. Colombia \(612/1995, adopted on 29 July 1997\)](#), where the Committee found several violations relating to the murder of indigenous Arhuaco leaders, the Committee of Ministers decided that the responsibility of state agents had not been proven in the death of the three people concerned and did not recommend compensation. This conclusion was arrived at following an administrative judgment exonerating the agents in question.<sup>123</sup> Also in two cases, [Becerra Barney \(1298/2004, adopted on 11 July 2006\)](#) and [Guerra de la Espriella \(1623/2007, adopted on 18 March 2010\)](#)<sup>124</sup>, the Committee found violations of article 14 (fair trial guarantees) due to a trial of a special tribunal of "faceless judges" (anonymous judges), where their hearings were not public and they had no right to be present during the trial. In this case, no compensation was provided, as the Constitutional Court had deemed the law under which the author was tried constitutional: it was considered indispensable in the interests of justice due to the grave security situation at the time. Once the security situation subsided, this law was rescinded but the authors never received compensation.

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<sup>119</sup> Information provided by Jorge Humberto Meza Flores, Human Rights Specialist, Inter-American Commission on Human Rights, OAS.

<sup>120</sup> See Moller and de Zayas, in "United Nations Human Rights Committee Case Law 1977-2008", Engel pub; Open Society Justice Initiative, in "From Rights to Remedies: Structures for Implementing International Human Rights decisions"; Van Alebeek and André Nollkaemper.

<sup>121</sup> [Fals Borda v. Colombia \(46/1979\)](#); [Salgar de Montejó v. Colombia \(64/1979\)](#); [Freres Sanjuan Arevalo v. Colombia \(181/1984\)](#); and [Fei v. Colombia \(514/1992\)](#). See Annual report, Human Rights Committee (A/59/40). In its concluding observations of 2016 the Committee requested the State to fully implement all of its decisions. CCPR/C/COL/CO/7

<sup>122</sup> A further difficulty in providing compensation automatically relates to the fact that the HRCttee does not indicate an exact sum. Thus, there would need to be some domestic process for determining the compensation sum.

<sup>123</sup> This information was provided by the authors (A/65/40). However, in the State's reply to the list of issues (CCPR/C/COL/Q/7/Add.1) for a dialogue with the Committee in 2016, this was one of eight decisions made by the Committee of Ministers in favour of victims, four of which were granted compensation.

<sup>124</sup> In this case, the Committee gave the State party an «E» for having failed to provide compensation. CCPR/C/118/3



76. Other states also have legislative (**Lithuania**) or constitutional (**Kyrgyzstan** – see paras. 49 and 54 above) provision for the payment of compensation. In **Lithuania**, the Law of the Republic of Lithuania on Reimbursement of Damage Caused by Illegal Actions by Public Authorities was established following a request by the HRCttee in its concluding observations of 1997<sup>125</sup>, which recommended the establishment of a specific mechanism “to ensure that the Views of the Human Rights Committee are systematically implemented.” This law was welcomed by the Committee in its concluding observations of 2004<sup>126</sup> in which it stated that it, “will further improve the implementation of the Committee’s decisions on complaints under the Optional Protocol, including the provision of compensation.” This law also applies to decisions of the ECtHR. No HRCttee cases have yet necessitated the application of this law<sup>127</sup>. According to the state, a separate Resolution, No. 1691, of 24 December 2003, approved compensation in the case of *Filipovich (875/1999, see annex 1)*. The decision was taken at the Government level, as the Law in question was supplemented by the provision on the reimbursement of damage pursuant to the decisions of the Committee only on 30 March 2004. Some states have indicated that the absence of such legislation prevents the payment of compensation.<sup>128</sup>

77. In **Greece** a civil case under articles 104, and 105 of the Introductory Law to the Civil Code can be taken through the administrative courts against the state after an adverse finding from a treaty body. In addition, anyone who believes that he or she is entitled to compensation for damages from the state could submit a request for a settlement or a conciliatory resolution of the dispute to the Legal Council of the state, a body responsible for settling disputes against the state, among other functions.<sup>129</sup> The Legal Council is not competent to settle claims against local authorities. The law in question has not yet been tested but its effectiveness has been questioned by the HRCttee (see para. 31-32 above).

78. In several cases (*Ziad Ben Ahmed Habassi v. Denmark (10/1997)*, *Kashif Ahmad v. Denmark (16/1999)*, *Mohammed Hassan Gelle (34/2004)* and *Saada Mohamed Adan v. Denmark (43/2008)*, see Annex I), **Denmark** has provided legal aid to petitioners pursuant to Act No. 940 (1999). While such legal aid is provided for the purpose of bringing the proceedings that leads to the Committees decisions (rather than as following-up to the decisions), Denmark argues it is a form of pecuniary compensation. It is dependent on the treaty body requesting the State party to provide observations on a complaint. Denmark argues that this legal aid relates to pecuniary loss. As to non-pecuniary loss, it has argued that the ICERD does not contain a provision on compensation like the European Convention on Human Rights, but even

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<sup>125</sup> 30 October 1997, CCPR/C/79/Add.87,

<sup>126</sup> 1 April 2004, CCPR/CO/80/LTU

<sup>127</sup> The case of *Paksas v. Lithuania (2155/2012)*, adopted on 29 April 2014, did not specifically recommend compensation but inter alia revision of the lifelong prohibition of the author’s right to be a candidate in presidential elections or to be a prime minister or minister.

<sup>128</sup> See *Párkányi v. Hungary (410/1990)*, adopted on 27 July 1992. (A/61/40)

<sup>129</sup> CCPR/C/SR. 3202

the ECtHRs, in awarding compensation, assesses the nature and seriousness of the violation and often rejects claims of non-pecuniary damage. This argument supports Denmark's view that the alleged discriminatory action against the complainants in CERD decisions was not of such a nature that it considers it reasonable to award compensation for non-pecuniary damage (moral damage or "pain and suffering"), as the discriminatory action was not aimed at the petitioner personally. Denmark further argues that recognition of a violation in itself should be sufficient, an argument rejected by the CERD.

79. The CERD found the provision of costs a satisfactory remedy in some cases (See Annex I), in two others<sup>130</sup>, it regretted the failure to provide compensation in addition to costs. These latter cases had recommended "adequate compensation for the moral injury" rather than "adequate compensation" as in the earlier cases. In one case [Aboushanif v. Norway \(1542/2007 see Annex I\)](#), the HRCtee did not agree with the author that the provision of costs as well as compensation was necessary for a satisfactory conclusion of the case, as costs were not part of the remedy requested. The CRPD and the CESCR specifically include in the remedy section of their decisions, recommendations for the payment of "compensation for the costs incurred in filing a communication" and/or "to reimburse the author for the legal costs incurred in the processing of this communication".<sup>131</sup>

80. The question arises therefore, whether all treaty bodies should encourage states to follow Denmark's example and provide for costs. It is recalled that complaints under the treaty body procedures are made free of charge and neither the treaties nor the Committees require legal representation. However, legal representation generally gives authors an advantage, and the Committees have clear legal arguments to consider, facilitating the review. Thus, it should be considered a good practice for states, where possible, to encourage individuals to take complaints to the treaty bodies by offering to pay costs in the event of an adverse finding against the state. However, it is difficult to see how costs alone could be recognised as a satisfactory form of redress for a human rights violation.

81. In **Austria**, if no agreement can be reached between the government and the author pursuant to a treaty body decision, the latter may request compensation through the Austrian Ombudsman Board. While any redress is made on an "*ex gratia*" basis, this is certainly an improvement from the earlier approach by Austria in [Pauger \(415/1990 - see Annex I\)](#), a case relating to discrimination on pension benefits, when no compensation was provided at all<sup>132</sup>. This new approach was applied in [Perterer \(1015/2001 see Annex I\)](#), who was provided with compensation and in the Ombudsman's

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<sup>130</sup> Murat Er (40/2007), adopted on 8 August 2007, and Saada Mohamed Adan (43/2008), adopted on 13 August 2010.

<sup>131</sup> CRPD: Liliane Gröninger et al. v. Germany (2/2010), adopted on 4 April 2014, X. v. Argentina (8/2012), adopted on 11 April 2014 and CESCR: I.D.G. v. Spain (2/2014), adopted on 17 June 2015.

<sup>132</sup> It is not clear whether compensation could not be paid due to the lack of enabling legislation as understood by the Committee (see footnote 64) or because no specific amounts were mentioned in the Views as indicated in the State party's reply. (A/66/40)

report, it highlighted its view that, “while the Committee’s Views are not legally binding it would be unconscionable not to implement them”. Thus, it considered the Views on the same level as decisions of the ECtHR<sup>133</sup>. It should be noted however that the HRCttee has expressed its concern with the “ex gratia” nature of this redress.<sup>134</sup> In the [Lederbauer case \(1454/2006 – CCPR/C/113/3\)](#), not yet finalized, according to the State, no agreement could be reached on the compensation issue, “owing to the author’s excessive claims, which went far beyond the compensation granted by the European Court of Human Rights in comparable cases.” Following an unsuccessful judicial review, the author may now make a claim before the Austrian Ombudsman Board.

82. **Serbia** has a civil procedure under which an author has received compensation following a decision of a treaty body ([CAT case of Nikolic \(174/2000\)](#) see [Annex I](#)). Other authors in Serbia were provided with compensation from the Courts, the Public Attorney Office or the Executive.

83. In **Finland** (where the ICCPR has been incorporated into domestic law and is directly applicable) it would appear that an obligation to pay compensation by judicial decision has arisen as a consequence of domestic jurisprudence<sup>135</sup>. As claims based on decisions of the HRCttee are considered public law complaints, compensation has been paid through the Supreme Administrative Court in the [Voulanne \(265/1987 see Annex I\)](#) and [Torres \(291/1988 see Annex I\)](#) cases. Also in the [Kivenmaa case \(412/1990 – see Annex I\)](#), the author filed a similar claim and the case was pending on appeal before the County Administrative Court of Uusimaa.

84. As mentioned under “B. Legislative, or constitutional provisions establishing a general obligation” above, in 2004, **Peru** rescinded law No. 23,506, which proclaimed that the HRCttee’s decisions were definitive international judicial decisions that must be complied with and executed. It does not appear that compensation was provided under this law to treaty body decisions but it has been provided since. In two cases, a CEDAW decision ([L.C. v. Peru, 22/2009 - see Annex 1](#)) and a decision of the HRCttee ([K.L. v. Peru 1153/2003 – See Annex I](#)), the state provided compensation.<sup>136</sup> How this was achieved is a good example of the complexity of internal negotiations when procedures are not yet established to implement treaty body decisions.

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<sup>133</sup> For criminal proceedings the Austria Code of Criminal Procedure allows for reopening of procedures subsequent to a judgment of the ECtHR (§363a) only.

<sup>134</sup> CCPR/C/AUT/CO/5, October 2015

<sup>135</sup> In the Voulanne case, the Supreme Court found that the claim arising from a Decision of the HRCttee was a public law dispute and not a case for civil damages and that the question whether Finland should pay damages or not should be solved in an administrative court. The Supreme Administrative Court ordered that compensation be paid in both the Voulanne and Torres cases. See, Heyns and Viljoen, in “The Impact of the United Nations Human Rights Treaties (n.1), 288”.

<sup>136</sup> Information on amendments to Peruvina law received from Cesar Rodrigo Landa Arroyo, Profesor Principal Coordinador del Área de Derecho Constitucional Facultad de Derecho Pontificia Universidad Católica Del Perú, Oscar Cubas Barrueto, Human Rights Consultant for the Vice Ministry of Human Rights and Access to Justice, from October 2012 to August 2015 and Carlos Augusto Sibille Rivera, Graduate Institute, Geneva.

At the outset of the negotiations, it was agreed that the process should culminate in an extrajudicial agreement. It was a long process involving numerous meetings between the relevant Ministries, Health and Justice, to decide firstly which Ministry would be responsible for paying the compensation (the one responsible for the violation and in these cases the Ministry of Health<sup>137</sup>) and then on what basis it could be provided. Parliament was also involved and posed questions on why compensation had not been paid. The Ministry of Justice provided the legal basis, which came in the form of the Ministry's opinion based on decisions of the "Tribunal Constitucional". The legal opinion indicates that the decisions of international bodies acting in a quasi-judicial manner are binding, read in conjunction with Constitutional Law, and International Human Rights Law<sup>138</sup>. This technical opinion, of 6 March 2015, from the Ministry of Justice is also referred to in the follow-up response from the author in *K.L. v. Peru*<sup>139</sup>, as authority for the recognition of these decisions as legally binding on all national institutions.

85. The "Director de Ordenamiento Jurídico" assessed the amount of compensation that should be paid. Over ten meetings were held between the authors' representatives and the Ministries involved to arrive at a "Conciliación Extrajudicial" in each case. Given that, unlike the CEDAW<sup>140</sup>, the HRCttee did not mention compensation for moral damage but only "an effective remedy, including compensation", this apparently raised some issues during the negotiations. Such issues will be avoided in the future, as the HRCttee will include compensation for non-pecuniary damage in future cases when appropriate (see para. 107 below). It is hoped that the Ministerial opinion on the binding nature of treaty body decisions and the decree on the provision of compensation, should be respected for future cases and that a more direct procedure for providing compensation can be applied.

86. **Kazakhstan** has indicated that there is no procedure for compensation following findings of a violation by a treaty body. However, in at least one case the author did receive compensation on the basis of a decision by the CAT (*Gerasimov v. Kazakhstan* (433/2010 – see annex 1). According to the complainant, the Courts involved considered that the Committee's decision was binding on the State and that it imposed an obligation on the State to take measures to award compensation for moral damages. However, it would also appear that the legal system in Kazakhstan does not allow decisions in prior cases to be a source of law and do not establish a binding legal precedent. Thus, there is no guarantee that such findings will be replicated in future cases of the treaty bodies. In fact, in a recent case of the HRCttee, the author's attempt at receiving remedies, including compensation, have been unsuccessful so far on the grounds that the Committee's decisions and

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<sup>137</sup> Decreto Supremo 017-2008-JUS, (regulated by Decreto Legislativo 1068), in particular art. 53. See Annex II.

<sup>138</sup> Legal report from the Ministry of Justice and Human Rights, "Oficio No. 203-2015 – Jus/VMDHAJ". See Annex II.

<sup>139</sup> CCPR/C/118/3

<sup>140</sup> The CEDAW remedy indicated "...adequate compensation for material and moral damages and measures of rehabilitation, commensurate with the gravity of the violation of her rights and the condition of her health, in order to ensure that she enjoys the best possible quality of life..."

international covenants cannot be taken into consideration.<sup>141</sup> This is another justification for the need for an administrative mechanism for the payment of compensation or legislation giving effect to these decisions.

87. In sum, many states have provided compensation through different mechanisms following adverse treaty body decisions. However, the process has often been long and cumbersome. Only a few states have established legislative or constitutional mechanisms to provide compensation specifically for violations under the treaty bodies: **Colombia, Kyrgyzstan, and Lithuania**. The procedures in **Kyrgyzstan** (the first test case is not yet finalised – paras. 49 and 54) and **Lithuania** appear to lend themselves to direct application and it is hoped that they will be so implemented. In cases for which an established compensation mechanism is not effective or appropriate, an *ad hoc* procedure could be considered to ensure the provision of compensation: in certain cases treaty bodies have considered such methods satisfactory follow-up in the past.

#### E. Expulsion cases under immigration legislation

88. Several states (**Sweden, Switzerland**), which consistently comply with treaty body decisions on non-refoulement issues, have specific legislation on implementing these decisions either directly or by admitting treaty body decisions as new circumstances making re-examination possible.

89. In 2005, **Sweden** amended its legislation to ensure automatic implementation of decisions of “international bodies”, which include treaty bodies, relating to non-refoulement cases unless there are exceptional circumstances. A step welcomed by the CAT<sup>142</sup>. The decisions themselves are not regarded as a separate ground for a residence permit, but the Migration Board grants permits on the grounds of refugee status or need of protection with reference to the judgment or decision of the ECtHR or treaty body. This excludes cases on expulsion on account of criminal offences, in which the Migration Board does not make decisions. What may also be considered a good practice by Sweden, are the measures taken by it with respect to the deportation of LGBT persons, a useful guide perhaps for other states (*X. v. Sweden* (1833/2008) – see Annex I).

90. In all cases of findings against it by the CAT under article 3 (non-refoulement) of the Convention<sup>143</sup>, **Switzerland** has granted residence permits, asylum or temporary admission (Annex 1). Residence permits or asylum were granted after *re-assessment*, as the CAT decisions, although not recognized as legally binding, are considered “new evidence” or new elements making re-assessment by the administration possible<sup>144</sup>. This practice of considering CAT decisions, as “new evidence” is grounded in a judgment of the former Federal Appeals Commission in Asylum Matters,

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<sup>141</sup> *Toregozhina v. Kazakhstan* (2137/2012), adopted on 17 March 2014. (CCPR/C/116/3)

<sup>142</sup> CAT/C/SWE/CO/5, May 2008.

<sup>143</sup> The State party has not ratified the Optional Protocol to the ICCPR.

<sup>144</sup> [http://ECtHR.coe.int/t/dghl/standardsetting/cddh/Meeting%20reports%20committee/62ndAddIII\\_en.pdf](http://ECtHR.coe.int/t/dghl/standardsetting/cddh/Meeting%20reports%20committee/62ndAddIII_en.pdf) - CAT letter 30 June 2005.

according to which the decisions of the Committee against Torture do not allow for reopening of domestic proceedings in themselves but may constitute “new evidence” allowing for a re-assessment of the case by the administration.<sup>145</sup> The Ministry has adopted the practice of reviewing all CAT cases on this basis, and this policy has not been questioned internally to date: the limited number of cases received from the CAT is perhaps a contributory factor.

91. The State Secretary for Migration assesses the cases in light of all factual and legal elements. It thus depends on the circumstances of the individual case whether an author is granted asylum and obtains refugee status (*Gbadjavi v. Switzerland* (396/2009) and *Fadel v. Switzerland* (450/2011) – see Annex I) or whether he/she is temporarily admitted with (*Abolghasem Faragollah et al.* (381/2009 – see Annex I) or without (*Harminder Singh Khalsa et al.* (336/2008 – see Annex I) refugee status. In a number of cases, the State provided the authors with “temporary admission” governed by, *Loi sur l’asile* (142.31), of 26 June 1998, and by chapter 11 of the Federal Act on Foreign Nationals of 16 December 2005. “Under the terms of art. 83 (3), of the Federal Foreign Nationals Act, enforcement is not lawful when sending the foreign national to his/her state of origin or a third state runs contrary to the commitments of Switzerland in international law”. The CAT has regarded this procedure of “temporary admission” as satisfactory. See cases in Annex I.

92. Reopening the domestic proceedings<sup>146</sup> is only allowed for the execution of judgments of the ECtHR given their legally binding nature. However, the difference between “reopening” and “reassessment” based on new elements appears negligible, given the nature of article 3 (non-refoulement) cases of the CAT, which are always evolving with new elements for consideration. Even after ECtHR judgements, the advice often given to petitioners is to have the cases “reassessed” rather than “reopened”, as it is less burdensome on the petitioners and many are not legally represented.<sup>147</sup>

93. In **Denmark**, following decisions of the HRCtee and CAT, asylum applications are systematically reopened by the Refugee Appeals Board after “criticism” by a treaty body.<sup>148</sup> Three provisions of the Aliens Act have been applied to HRCtee and CAT non-refoulement cases. Under this legislation,

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<sup>145</sup> <http://ECtHR.ark-cra.ch/emark/f/index.htm> > JICRA - Table des matières > 1998 > 1998/14.

<sup>146</sup> It is not clear whether this relates only to legal proceedings or also administrative.

<sup>147</sup> Information received from Adrian Scheidegger, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l’Homme le CAT, le CERD et le CEDAW, Département fédéral de justice et police DFJP Office fédéral de la justice OFJ Représentation de la Suisse devant la Cour européenne des droits de l’Homme, le CAT, le CERD et le CEDAW.

<sup>148</sup> In its follow-up response to the case of *O.H.A v. Denmark* (2379/2014), adopted on 7 July 2016, the State party stated, “The Government observes that it is standard practice that the Danish Refugee Appeals Board (*Flygtningenævnet*) reopens all cases in which criticism has been raised by a UN committee. The relevant case is then heard by an entirely new panel consisting of members who have not previously been involved in the hearing of the case.” CCPR/C/119/3

resident permits have been granted for “exceptional reasons”, in situations where “the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin”, or where there is a “material change” in the circumstances of an alien.<sup>149</sup>

94. In **Norway**, cases may be reopened by the Immigration Appeals Board following a decision of a treaty body and residence permits may be granted on humanitarian grounds.<sup>150</sup> There have been a limited number of adverse decisions against Norway.

95. Some states interpret established legislation in a manner facilitating compliance. In **Canada** residence permits have been provided on humanitarian and compassionate grounds following decisions of the HRCttee.<sup>151</sup> However, it would appear that the implementation of these cases depends on whether the State agrees with the HRCttee’s decision<sup>152</sup>. Recently, in response to a finding of a potential violation with respect to a return to Pakistan, the state referred to the, “Views ... (as) the latest in a troubling trend of Views where the Committee has substituted its own evaluation of the facts and evidence for those of domestic organs.”<sup>153</sup> In its dialogue with the HRCttee in July 2015, Canada indicated that it accepted the majority of the Committee’s decisions and that its failure to respect a few cases should not be seen as a refusal to honour its commitments under the Optional Protocol.<sup>154</sup> In May 2012, the CAT expressed its regret at Canada’s failure to

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<sup>149</sup> X. v. Denmark (2007/2010), Byahuranga v. Denmark (1222/2003), adopted on 1 November 2004, K. ECtHR. v. Denmark (464/2011), adopted on 23 November 2012, El-Hichou v. Denmark (1554/2007), adopted on 22 July 2010, Amini v. Denmark (339/2008), adopted on 15 November 2010, El-Hichou v. Denmark (1554/2007), adopted on 22 July 2010. See Annex I.

<sup>150</sup> In Eftekhary v. Norway (312/2007), adopted on 23 February 2012, the State party informed the CAT that following the adoption of its decision, the Norwegian Immigration Appeals Board had reopened the complainant’s case and, on 31 January 2012, the complainant was granted a leave to stay, pending the consideration of his appeal. On 12 May 2014, he was granted a residence permit on grounds of humanitarian consideration for one year, and he would have to apply for renewal. The CAT considered this satisfactory. (Follow-up report CAT/C/53/2 and annual report A/68/44)

<sup>151</sup> See: Thuraiamy v. Canada (1912/2009), adopted on 31 October 2012; Shakeel v. Canada (1881/2009), adopted on 24 July 2013; Pillai v. Canada (1763/2008), adopted on 25 March 2011; and Singh v. Canada (319/2007), adopted on 30 May 2011, in Annex I.

<sup>152</sup> See Canada’s follow-up response in the case of A.H.G (2091/2011), adopted on 7 March 2016: “Canada considers that it was not in violation of its international human rights obligations under the Covenant when it removed A.H.G. to his country of origin (...) Canada does not comprehend the basis of the Committee’s views, which appear to be unsupported by both the evidence and the Committee’s prior views, and further appear to be an illegitimate expansion of the scope of Article 7 of the Covenant. In the circumstances, Canada does not consider that any remedy is owing to A.H.G.”

<sup>153</sup> Shakeel v. Canada (1881/2009), adopted on 24 July 2013. CCPR/C/112/R.3

<sup>154</sup> CCPR/C/SR.3176. It made the same commitment in its response on the case of A.H.G v. Canada (2091/2011), adopted on 25 March 2015. In its response, it gave detailed reasoning why it disagreed with the Committee’s Views that it had violated article 7 when it deported the author to Jamaica and regretted that it was thus unable to comply with the decision. In October/November 2016, the Committee gave the State party an “E” for having failed to implement its Views (CCPR/C/118/3).

implement all of its decisions<sup>155</sup> and in July 2015, the HRCttee was concerned about the State party's reluctance to comply with all of the Committee's Views ... in particular when they relate to recommendations to reopen humanitarian and compassionate applications<sup>156</sup>. The HRCttee also regretted the lack of "an appropriate mechanism" to implement the Views.

96. **Australia's** opinion on the status of treaty body decisions concurs with that of Canada. In its replies to the list of issues in 2009 it, "reiterates its position that the Views of the Committee adopted under the First Optional Protocol are to be considered in good faith by states parties and that considerable weight should be given to them, although they are not formally binding in law". Despite this view, and its detailed arguments rejecting the HRCttee's findings, most of the expulsion cases have been resolved with the provision of permanent residence permits and release from administrative detention under existing legislation.<sup>157</sup> Cases which have proved to be more problematic to implement unsurprisingly relate to the "detention of individuals with adverse security assessments"<sup>158</sup>.

97. To date, most of the successful expulsion cases have been implemented through a specific procedure of implementation or effective use of existing legislation as well as the right measure of political will. Specific legislation is clearly more likely to result in implementation. The application of existing rather than specific legislation has resulted in successful implementation in some cases but has not been applied to all, it cannot be relied upon to systematically comply with treaty body decisions, and maybe less likely to be applied in the event of a less-friendly human rights environment and/or political change. Could the negative reactions of some states to recent treaty body decisions be reflective, at least in part, of their broader immigration policies? The question may also be asked as to why so many of these expulsion cases have been successfully implemented. The fact that the states in question are generally human rights respectful and hold the human rights system in esteem plays a large part in successful implementation in general. These cases are also in a sense "easy" to implement as the nature of asylum cases means they are always evolving and thus lend themselves to review. In addition, they involve an immigration authority, which is more flexible than the criminal justice system, and thus no *res judicata* arguments arise. The latter is demonstrated by the Swedish example (which is probably not alone) in reserving expulsion on account of criminal offences to the criminal justice system, thus making those cases more difficult to implement.

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<sup>155</sup> CAT/C/CAN/CO/6

<sup>156</sup> CCPR/C/CAN/CO/6

<sup>157</sup> E.g. *Kwok v. Australia* (1442/2005), adopted on 23 October 2009; *Winata v. Australia* (930/2000), adopted on 26 July 2001; *Madaferri v. Australia* (1011/2001), adopted on 28 July 2004; and *C. v. Australia*, (900/1999), adopted on 28 October 2002 in Annex I.

<sup>158</sup> Disappointingly, with respect to some cases, the release of detainees does not appear to have taken place for the purposes of complying with the HRCttee's decisions (deeming detention arbitrary) but rather in response to a revision of the inmates' security assessment. E.g. *F.K.A.G. et al. v. Australia* (2094/2011), adopted on 26 July 2013, and *M.M.M. et al. v. Australia* (2136/2012), adopted on 25 July 2013. CCPR/C/119/3



## F. Friendly settlement mechanism<sup>159</sup>

98. **Ecuador** used this contractual mechanism to successfully implement two decisions of the HRCttee ([Villacres Ortega v. Ecuador \(481/1991\)](#) and [García Fuenzalida \(480/1991\)](#) see [Annex I](#)), with findings of violations of articles 7 (torture and ill-treatment) and 10 (poor conditions of detention) of the ICCPR. This process was led by the Office of the State Procurator-General/Attorney General, who initiated discussions for the purpose of making amends for the injury caused. The agreement reproduced in Annex II sets out in detail how the state achieved this goal. He/She recognized that the state, “in strict accordance with its obligations under the International Covenant on Civil and Political Rights and other agreements on human rights under international law, any violation of an international obligation that has led to injury entails a duty to make appropriate restitution. Monetary compensation and the criminal punishment of the culprits being the fairest and most equitable way of doing so”.

99. In the settlement, the State acknowledged its obligations to comply with the treaty bodies and also admitted the authors had been tortured by state agents (a rarity in implementation - possibly due here to a regime change). Both the authors and the representative of the state signed the agreement thus definitively closing the follow-up to these cases themselves. Compensation was provided through conformity with “article 215 of the Political Constitution of the Republic, promulgated in the Official Register No. 1 and in force since 11 August 1998”, which gave the Attorney General the power to represent the state.

100. In another case against Ecuador, ([Bolanos v. Ecuador \(238/1987\)](#) – [Annex I](#)), the friendly settlement procedure was not used but the case was successfully implemented.<sup>160</sup>

101. **Argentina** also used a friendly settlement mechanism with respect to at least two cases so far ([L.N.P. \(1610/2007\)](#) – [Annex I](#)), and [Ramona Rosa González \(1458/2006\)](#) – [Annex I](#)) Possibly also in [V.D.A/L.M.R v. Argentina \(1608/2007\)](#) - [Annex I](#). It is not clear whether this mechanism is the same one applied under the inter-American system, under which ad-hoc tribunals may be established to quantify damages.<sup>161</sup> Within the context of the Inter-American Court, the State adopts friendly settlements by means of Article 44

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<sup>159</sup> This is a mechanism enabling the State concerned and the victims to reach an agreement that offers a solution to the human rights violations. The process depends on the will of the parties. It is frequently used in the inter-American system.

<sup>160</sup> In the only two other cases against Ecuador ([Terán Jijón, 277/1988](#) and [Cañón García 319/1988](#)), they were not satisfactorily implemented. See A/47/40

<sup>161</sup> These tribunals establish the amount of payment to be awarded and the modalities of payment. The State requires the Inter-American Commission to publish the friendly settlement agreement so that it may be adopted by Executive Decree. In some cases, once the decree is issued a tribunal may be set up. The challenge to this system is that the Commission has to make the agreement public even when there is no substantial compliance. This is a risk as article 49 of the Convention indicates that the publication of the friendly settlement report is a final decision and definitively ends the proceedings. Information from Jorge Humberto Meza Flores, Human Rights Specialist, Inter-American Commission on Human Rights, OAS.

of Law no. 6757 which regulates extrajudicial agreements. Two other cases were successfully implemented by Argentina without the use of this mechanism, the HRCtee case of [Monaco de Gallichio \(400/1990 - Annex I\)](#) and the CRPD case of [X. \(8/2012 - Annex I\)](#). As these cases related to a family law/child access case, and the conditions of detention of a disabled person, respectively, they may not have warranted the use of this mechanism.

102. The use of the friendly mechanism procedure is best known in the context of dispute resolution under the Inter-American Convention on Human Rights as a method to avoid litigation before the Commission. It has proved successful in this regard by implementing a broad spectrum of reparation measures. This procedure has afforded many victims of human rights violations the opportunity to obtain full reinstatement of the violated right or reparation through various measures of satisfaction<sup>162</sup>. It has also produced some good practices, including the establishment of *ad hoc* arbitration courts to determine the amount of compensation (Argentina did so); the implementation of national laws establishing mechanisms to ensure enforcement of friendly settlements at the domestic level (Ecuador and Argentina did so); and the creation of multi-institutional teams by the states to participate in the negotiation of friendly settlements.<sup>163</sup> It is not clear whether these states applied the same good practices when applying friendly settlement procedures to follow-up on adverse treaty body decisions.

#### G. Satisfactory implementation without mechanisms/measures

##### **Compensation**

103. To date, the majority of satisfactory responses following decisions of the treaty bodies have been arrived at domestically without any formal mechanism. Given the small number of cases implemented by the treaty bodies (see para. 16 above) this is not an argument against mechanisms, quite the contrary. The establishment of mechanisms should improve the level of compliance. Unsurprisingly, one of the main remedies provided without a mechanism has been compensation. (See Annex I). In some of these cases, compensation was granted *ex gratia*. By way of example, in the Czech Republic property restitution cases, compensation was paid by the executive and in some cases under a “Programme for Holocaust victims”. *Ex gratia* payments are generally provided by executive or administrative action, but on at least one occasion, this was not the case. In [Dumont v. Canada \(1467/2006 – see Annex I\)](#), where several violations were found for wrongful conviction and a rape sentence, the author was compensated following an out-of-court agreement with the City of Boisbriand and its insurers, which he sued in civil liability, for damages incurred as a result of his conviction of imprisonment. A “substantial amount” (not revealed by author) was received from the City of Boisbriand’s insurers (Quebec). Attempts to receive compensation

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<sup>162</sup> Impact of the Friendly Settlement Procedure, OEA/Ser.L/V/II. Doc. 45/13, 18 December 2013, para. 4.

<sup>163</sup> Impact of the Friendly Settlement Procedure, OEA/Ser.L/V/II. Doc. 45/13, 18 December 2013, para 232

through the judiciary failed. At its 108<sup>th</sup> session, the HRCttee found this response satisfactory.

104. Once compensation is paid the treaty bodies do not generally look behind or question the provider – the state is treated as a whole. In [Fijalkowska v. Poland \(1061/2002, see Annex I\)](#), the HRCttee considered compensation provided by the Ministry of Foreign Affairs a satisfactory remedy for a violation of the author’s right to be assisted and represented at a hearing for her committal to psychiatric detention. In the case of [Senegal v. Koné \(386/1989, see Annex I\)](#), the HRCttee had a similar view on the *ex gratia* compensation provided by the Ministry of Justice to the author with respect to lengthy pre-trial detention.

105. Some states have questioned the very obligation to provide compensation. For example, in a CEDAW case against the Philippines ([Karen Vertido, 18/2010, adopted on 16 July 2010](#)) in which the Committee recommended *inter alia* compensation following a rape, the State party noted that, “the Committee’s recommendation for the provision of adequate compensation is not based on an explicit obligation of the State party under the Convention.” In [Gröninger v. Germany \(See Annex I\)](#), the state contested the CRPD decision relating to discrimination in the employment of a disabled person and refused to provide compensation on the grounds that “there is no legal foundation, either under the Optional Protocol to the Convention or under the national legislation.” Interestingly, Germany did not see such obstacles in the recent article 3 (non-refoulement) CAT case of [Abichou v. Germany \(430/2010 – see Annex I\)](#), an article 3 extradition case to Tunisia, when it made an offer of compensation and indicated that if the author was dissatisfied with the amount he has the opportunity to use the remedies available to him under German law with regard to compensation. Could the difference be based on a view that the decisions of different treaty bodies bring different obligations? In a recent CRPD case, [Nyusti and Takács v. Hungary \(See Annex I\)](#), the author argued that the amount of compensation provided was not sufficient and that it should be the same as for the ECtHR. However, the State party replied that unlike the ECtHR, compensation here is not obligatory. Other states have seen similar obstacles to the provision of compensation but “out of respect to the (Human Rights) Committee” have provided compensation nevertheless ([Van Alpen v. Netherlands \(305/1988\)](#), and [Coeriel v. The Netherlands 453/1991 – see Annex I](#)).

106. Treaty bodies have been very cautious in entering into an analysis of quantum of compensation, either at the remedy or follow-up stage of the individual complaints process. Despite requests from authors and states for guidance on amounts to be awarded at the follow-up stage, the treaty bodies have left this for the states and authors to negotiate. Awards made by states vary from *ex gratia* token amounts to very large sums (see Annex 1). Only a few treaty bodies indicate (but not consistently) the type of compensation that should be provided (for pecuniary or non-pecuniary/moral damage). While authors may complain about the amount offered, the treaty bodies have

avoided this discussion at the follow-up stage.<sup>164</sup> At the remedy stage, the HRCttee often recommends “an effective remedy, including compensation”. It never provides the amount to be paid, on some rare occasions it has indicated how compensation should be calculated and on other occasions, it refers expressly to compensation for the “mental anguish” suffered by the author of the complaint.<sup>165</sup>

107. In a recent paper on remedies adopted during the Committee’s 118<sup>th</sup> session in October/November 2016, it expressed its intention to continue its present practice of, as a general rule, not specifying sums of money and when appropriate, its intention to expressly state that compensation should cover both material and moral (or non-material) harm<sup>166</sup>. As indicated above, the CERD has already included compensation for “moral” damage in some of its decisions and CEDAW sometimes recommends compensation for moral/psychological as well as material harm.<sup>167</sup>

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<sup>164</sup> In what appears to be a departure for the Committee, in recent follow-up to a case, the Committee did not accept that a State’s offer of compensation was sufficient. In *Afuson Njaru v. Cameroon* (1353/2005), adopted on 19 March 2007, the Committee had found violations relating to physical and mental torture; arbitrary detention; freedom of expression; security of person and right to a remedy. In its latest follow-up response, the State party expressed regret at the author’s rejection of its previous compensation offer of 20,000,000 CFA francs (around \$32,400) and could not agree to the author’s request for 500,000,000 CFA francs (around \$813,000). The Committee gave a grade of “B2” under the follow-up procedure i.e. “Initial action taken, but additional information and measures required”, without further explanation and indicated that it would arrange to meet with the State party. (A/69/40)

<sup>165</sup> In a few cases, the Committee gives some guidance on the amount to be provided: *Laptsevich v. Belarus* (780/1997), *Aarela v. Finland* (779/1997) and *Pauger v. Austria* (716/1996). By way of example, in the latter case, the Committee concluded that “the State party is under the obligation to provide Mr. Pauger with an effective remedy, and in particular to provide him with a lump-sum payment calculated on the basis of full pension benefits, without discrimination.” In a case against Tajikistan, the HRCttee requested compensation for the “mental anguish” suffered by the author’s mother who did not know where her son’s gravesite was (the son had been sentenced to death and executed).

<sup>166</sup> See, “Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights” (CCPR/C/158), at the following link: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/158&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/158&Lang=en). This falls short of the ECtHR and the IACHR both of which award compensation for pecuniary, non-pecuniary damages and costs and expenses – and both indicate *how much* should be awarded based on submissions by the applicants and other criteria. The ECtHR has a method (so far unpublished) to calculate compensation, although the Court itself recognizes that greater consistency and proportionality in determining compensation is necessary. The IACHR has indicated that the calculation of compensation is not necessarily based on strict formulas but varies according to the circumstances of the case. It is determined by the “American Convention and the applicable principles of international law” and is not limited to the “defects, imperfections or deficiencies of national law” (*Velasquez Rodriguez v. Honduras*, (No. 7, 1989). It is suggested by some scholars that there are serious problems in both tribunals caused by the variability of awards, which may erode confidence in the justice and the human rights system. See Dinah Shelton, in “Remedies in International Human Rights Law”, Oxford 3<sup>rd</sup> edition, and Jo Pasqualucci, in “The Practice and Procedure of the Inter-American Court of Human Rights”, Cambridge 2<sup>nd</sup> edition.

<sup>167</sup> By way of example, the CEDAW decision of *Pimentel v. Brazil* (17/2008), adopted on 30 November 2007 (see Annex I), requested the provision of compensation to the family of a deceased woman who died in childbirth, as a result of the States failure to ensure appropriate services in connection with pregnancy.

108. The HRCttee has been reluctant to award costs when recommending compensation probably because it is not necessary under the Covenant to be legally represented. In *Jahani v. Sweden* (357/2008 – see annex I), the CAT recommended the state not to deport the author under article 3 of the Convention. An argument by Counsel inviting the Committee to ask the State to compensate his costs was rejected by the State as, “the Committee’s decision did not contain any recommendation as to compensation, and that, therefore, there were no legal grounds to have such payment made”. The Committee made a finding of a satisfactory response while noting the partial satisfaction of the author.

109. Sometimes states demonstrate novel ways of granting compensation even when the treaty body recommended a different remedy. In an interesting case against *ex-Yugoslavia (Ristic – see annex I)*, the Supreme Court having endorsed the CAT’s decision, “substituted the international remedy of specific performance with the national remedy of reparation”. The Court was not in a position to grant the remedy recommended by the CAT of investigation and publication and thus provided compensation instead.<sup>168</sup> The CAT considered the compensation provided for non-pecuniary damages and interest as a satisfactory remedy. This is the only case in which we have been informed of interest having been paid.

110. Some authors have to wait a long time for compensation and engage many different state authorities: an issue rarely acknowledged or considered by the treaty bodies under the follow-up procedure. In the CEDAW case of *A.S v. Hungary* (4/2004), relating to a forced sterilisation, the author was finally provided with compensation in July 2009, after an three-year battle following the Committee’s decision and eight years after the sterilisation. This was the culmination of Parliamentary involvement (during which questions were asked on why she had not been paid) and a long collaboration between the author’s representative and the Ministry of Social Affairs and Labour: a similar scenario to the process mentioned above in Peru on the abortion cases.

111. For perhaps practical and doctrinal reasons, the treaty bodies have avoided providing states with detailed advice on compensation, posing some challenges for states. From a practical perspective, both the treaty bodies, and Secretariat supporting them, have limited time and resources to deal with the work they have (most treaty bodies continue to have a large backlog of complaints to be considered<sup>169</sup>). It is perhaps unrealistic in the current climate to consider setting up a complicated system to establish quantum of compensation in each individual case. The calculation of compensation to remedy individual findings of human rights violations (civil and political, and economic, social, and cultural) across an international jurisdiction would be a complicated one. How would compensation be calculated? If it were to be based on domestic practice, questions of justice may be raised as to the

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<sup>168</sup> Discussed by S. Djajic, in “Victims and Promise of Remedies: International Law Fairytale Gone Bad”, *San Diego International Law Journal* 9 (2008) 329-66, 354-5.

<sup>169</sup> High Commissioner’s Report on Treaty Body Strengthening (A/66/860) and GA/RES/68/268.

“value/worth” of a remedy based on the economic circumstances of one state compared with another. Is it appropriate that a financial remedy (not excluding other remedies) for torture could differ, sometimes substantially, from one state to the next? Perhaps the best approach is to accept the current limitations on the treaty body procedure. If and/or when there is an entire overhaul of the treaty body system, an approach advocated by many<sup>170</sup>, the idea of specifying the amount of compensation to be awarded could be revisited. In the event of such a formidable revamp, much can be learnt from the ECtHR and the Inter-American system (including on the heads of damages), both of which have established such a compensation scheme, albeit not without their critics (see footnote 165).

112. Compensation cannot be considered to remedy all types of human rights violations but it is a versatile and flexible remedy for states to provide, as demonstrated by the number of cases in Annex I. The provision of compensation is less likely to cause *res judicata* arguments or objections on the basis of the non-binding nature of decisions. It would be preferable to have a mechanism in place under which compensation may be provided effectively and efficiently. Such a mechanism would avoid long delays in the provision of compensation and the frustration for authors of having to argue their case for compensation in different fora. Although not an ideal solution, in the event that such a mechanism is ineffective with respect to a particular case, compensation could be provided on an *ad hoc* or *ex gratia* basis: a solution that treaty bodies continue to find satisfactory in certain cases. However, a cautionary approach in the provision of *ex gratia* compensation is suggested given that it is often accompanied by a denial of responsibility or failure to acknowledge responsibility on the part of the State. If this is the case, some may consider it payment for the right to violate.

### **Legislative change**

113. In around thirty cases, treaty body decisions (mostly from the HRCttee) resulted directly/indirectly in the development of new legislation (amendment/repeal/enactment) in the areas of labour law, criminal procedure, minority rights, migration, language, education, violence against women, abortion, and discrimination on a variety of different grounds.

114. CEDAW decisions resulted in amendments to legislation and policy with respect to domestic violence, sterilization and abortion. In what is probably the most famous non-article 3 CAT case ([Guengueng et al. Senegal, 181/2001](#), [See Annex 1](#)), the Committee’s findings and subsequent follow-up played an important role in the State’s handling of this case, in particular the amendments made to legislation and the Constitution of Senegal which removed in part the technical impediments to trying Hissene Habré, ex-

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<sup>170</sup> E.g. High Commissioner’s Plan of Action on a unified standing treaty body proposal. (HRI/MC/2006/2, 22 March 2006). Also, “Unification of the monitoring bodies of CESCR and HRCttee”, as advanced by Professor Schrijver (The Netherlands), Professor of Public International Law and Academic Director of the Grotius Centre for International Legal Studies, Leiden University and other contributions on the issue of treaty body strengthening at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBSubmissions.aspx>.

President of Chad.<sup>171</sup> The trial was the first in the world in which the courts of one country tried and convicted the former ruler of another for alleged human rights crimes. On 30 May 2016, Habré was convicted of crimes against humanity, summary executions, torture and rape. As stated by the High Commissioner for Human Rights, “While the verdict may be appealed, this sends a clear message to those responsible for serious human rights violations around the world that nobody is above the law and that, one day, they may also face justice for their crimes.”<sup>172</sup>

115. There is little information at hand by what method states amended their legislation pursuant to a treaty body decision. Germany indicated that if the HRCttee’s decisions indicate the necessity for legislative changes, it falls to the Ministry responsible for the relevant law to introduce them. Other states have also indicated that they have the general practice of bringing treaty body decisions to the attention of Parliament.<sup>173</sup> In some states, questions have been asked in Parliament on how particular decisions were being implemented which ultimately led to legislative change. Given the importance of Parliament in the implementation of decisions, the general mechanism of implementation referred to in “A” above should be involved in informing Parliament of decisions that affect domestic legislation.

116. A recent example of the internal challenges in amending legislation pursuant to Committees’ decisions, in particular on controversial issues, is demonstrated in the case of [Mellet v. Ireland \(2324/2013, adopted on 31](#)

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<sup>171</sup> This CAT decision of May 2006 was responded to by the State on 7 March 2007, in which it provided information on its revised legislation: one law modifying its criminal code introducing relevant provisions on crimes of genocide, war crimes and crimes against humanity and another modifying its civil code introducing universal jurisdiction. According to the State’s response of 7 March 2007: “Avec ces deux text, le Sénégal vient de combler le vide juridique qui avait empêché les juridictions sénégalaise, pour des raisons technique liées à l’inadaptation de la législation nationale, de connaître de l’affaire Hissene Habré”. In response to this information, the lawyers in this case indicated, “En effet, nous sommes convaincus que la décision du Comité, adoptée le 17 mai 2006, ainsi que ses démarches pour suivre l’application de ses recommandations, ont joué un rôle important dans les avancées significatives récemment accomplies par le gouvernement du Sénégal dans ce dossier, telles que présentées dans sa lettre du mars 2007”. Inevitably, other actors played significant roles in ensuring Habré was ultimately brought to trial, including the International Court of Justice Decision of 2012, the European Union, the ECOWAS Court, and the African Union, not to mention the extraordinary commitment of the lawyer in this case, Mr. Reed Brody, Human Rights Watch.

<sup>172</sup> Press release, 30 May 2016

<sup>173</sup> E.g. in Sweden, the government sends treaty body decisions to the Parliamentary Ombudsman and in Australia directly to the Parliament. See *Rogerson v. Australia*, (802/1998), adopted on 3 April 2002. “The Australian Government affirmed its purpose to present the Committee’s Views in Parliament, in accordance with the Committee’s request, and in accordance with its established practice. The Government also observes that it has forwarded the Committee’s Views to the Government of the Northern Territory”. (CCPR/C/80/FU/1). In Bosnia and Herzegovina, the government sent the Views of the HRCttee to Parliament for an urgent parliamentary procedure with respect to one amendment and through “the regular parliamentary procedure”, with respect to draft amended Law on the rights of veterans and their family members is scheduled for the first session of the House of Representatives. See follow-up response to *Prutina et al.*, 1917/2009, 1918/2009, 1925/2009 and 1953/2010, adopted on 28 March 2013 (CCPR/C/112/R.3).

March 2016 - annex 1). In this case, the HRCttee found violations of articles 7 (cruel inhuman and degrading treatment), 17 (arbitrary restriction on right to privacy) and 26 (discrimination). On 7 July 2016, “the Fatal Foetal Abnormalities Bill”, was tabled in Parliament. The intention of this Bill was to relax Ireland’s very restrictive abortion laws by including the availability of abortion services in cases of fatal foetal abnormalities. This Bill was defeated in parliament (“the Dáil”) by 95 votes to 45. The fact that the Attorney General’s opinion of the bill was that it was unconstitutional, as incompatible with the eighth amendment<sup>174</sup> of the Irish Constitution, more than likely contributed to its defeat. This amendment had introduced a ban on abortion by granting a foetus the same right as the woman carrying it. Since then, a “citizens’ convention” headed by a judge has been set-up with the task of examining the eighth amendment. It is expected to produce a report on the issue of abortion for Parliament in 2017.

117. In some cases of legislative reform, states have made specific reference to the treaty body decisions themselves, as contributing to the required change.<sup>175</sup> The positive impact of the treaty bodies is demonstrated by these contributions to the development of legislation: an impact that goes far beyond individual redress. It also reveals the importance of parliamentary involvement in the process of implementation. As recognized by the ECtHR in Resolution 1787 (2011), “The role of national parliaments can be crucial in this respect, as has been illustrated by parliamentary scrutiny mechanisms set up in the Netherlands and in the United Kingdom. A major reason for deficient compliance with Court judgments is the lack of effective domestic mechanisms and procedures to ensure swift implementation of requisite measures, often requiring coordinated action by national authorities.”<sup>176</sup>

### **Other satisfactory remedies**

118. Many other satisfactory remedies have been provided following decisions of the HRCttee (see Annex I). They relate to the commutation of death sentences following Presidential prerogatives of mercy, the abolition of the death penalty and release following Presidential pardon and in one case release following a decision by the Privy Council. HRCttee decisions also led to: the reinstatement of employment positions in the public service and judiciary; assistance with finding jobs; provision of housing; release/early release following interventions by the President or Court (it is not clear how

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<sup>174</sup> The Amendment inserted a new sub-section after section 3 of Article 40. The resulting Article 40.3.3 reads: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

<sup>175</sup> E.g. Follow-up response by Spain on amendments necessitated by the many article 14.5 cases found against it by the HRCttee. “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...”(A/61/40) See also footnote 165 on legislative changes brought about by the the Habre case.

<sup>176</sup> The Peruvian and Hungarian cases referred to above are illustrative of the need for Parliamentary involvement.



this was achieved); official acknowledgement of graves; erection of monuments; naming a square after a victim; change in hospital procedures; facilitating the change of a name; ordering of death certificates; removal from UN sanctions list; provision of (disability) pension; reform of the family justice system; remit of corporal punishment; and a public oral and written apology. CERD decisions have led to investigations and prosecution of racial discrimination and CAT to executive action ensuring the investigation of torture claims. It should also be mentioned that in the vast majority of cases, states have published and if necessary translated treaty body decisions<sup>177</sup>.

119. Even in situations where states contest treaty body decisions, sometimes they take action to remedy a violation. In *E. B. v. New Zealand* (1368/2005), according to the author, “as a result of the Committee’s decision, some priority was finally given to ... (this family law) case by the judicial authorities and a four-day hearing commenced on 20 August 2007”, only four months after the HRCtee’s decision. Also, some states have provided remedies even before consideration<sup>178</sup>, and others provide remedies even when the finding of a violation in itself is considered sufficient<sup>179</sup>.

120. It is observed that given the significant number of cases requesting investigation of criminal cases and consequential prosecution of those responsible for criminal offences, in particular from the HRCtee, there are a very limited number of States that have provided this as a remedy.

## **Discontinuances**

121. Cases, which have been discontinued by the treaty bodies (612 cases to date<sup>180</sup>) without examination, relate to an area of research that has been given little attention in assessing the impact of the treaty bodies. This is probably due to the difficulty in accessing the reasoning behind the discontinuation of each case. In the last few years, the HRCtee has attempted to fill this lacuna by issuing formal decisions on discontinuations with the reasoning behind its decision. A sizeable portion of cases is resolved after registration but prior to a final decision being made by the treaty bodies. This is a further demonstration of the positive impact of the treaty body complaints procedure, the extent of which has not yet been fully assessed. Since the HRCtee commenced its work under the Optional Protocol in 1977, it discontinued 386 cases out of the 2,759 cases registered i.e. 14% of registered cases<sup>181</sup>. By way of example in the HRCtee’s most recent annual report, during the period under review (3 sessions between 2015 and 2016), 18 cases were discontinued for such reasons as withdrawal by the author, because the author or counsel

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<sup>177</sup> I have not added this component to Annex 1 as they are too numerous and take up too much space. A suggestion by one state that publication was unnecessary given that the HRCtee’s decision was published on the Committee’s website is clearly an unsatisfactory response.

<sup>178</sup> *Dar v. Norway* (249/2004), adopted on 11 May 2007. See Annex 1.

<sup>179</sup> E.g. *Matyus v. Slovakia*, (923/2000), adopted on 22 July 2002, and *M.A.K v. Germany* (214/2002), return to Turkey, adopted on 12 May 2004. See Annex 1.

<sup>180</sup> 386 by the HRCtee (A/71/40), 216 by the CAT (A/71/44), 1 by the CERD (A/71/18), 9 by the CEDAW (A/71/38) and none by the CRPD.

<sup>181</sup> A/71/40

failed to respond to the Committee despite repeated reminders, or because the authors, who had expulsion orders pending against them, were allowed to stay in the countries concerned. Other cases, included in annex 1, relate to discontinuation by reason of legislative change and release of the author. In short, in the majority of these cases, the states provided remedies prior to consideration by the Committee. It is probable that the reasoning behind the discontinuation of other treaty body cases is somewhat similar to that of the HRCtee. Recently, the other treaty bodies have followed this practice of the HRCtee by adopting formal decisions with the reasoning behind discontinuation. It be interesting, to the extent possible, to learn from states on the nature of the domestic proceedings that led to the provision of a remedy, in anticipation of consideration by a treaty body.

## **Conclusion**

122. It is disappointing that a limited number of treaty body decisions have been implemented to date. This paper has attempted to demonstrate that the establishment of appropriate procedures and mechanisms can help states fulfill their obligation to act in good faith and ensure that decisions take effect domestically. A prerequisite to the establishment of mechanisms of implementation is the translation of rights in the (parent) treaty into domestic law. Many mechanisms already exist, albeit some at an early stage in their development, and others have had limited use to date but appear promising. In the last 5/6 years (around the time the HRCtee commenced asking states for information on implementation mechanisms) more procedures have been established. It is hoped that this represents a willingness by these states to improve their compliance with treaty body decisions.

123. A challenge arises from the non-legally binding nature of decisions. While this is an impediment to implementing decisions domestically it does not appear to be unsurmountable. For nearly every remedy found by treaty bodies so far, states have managed to find ways around *res judicata* and separation of powers arguments, either through a specific mechanism or by providing a remedy *ex gratia/ad hoc*. Even with respect to the remedy to reopen/review cases - the most controversial form of redress to implement - a number of states have procedures in place, yet to be applied.

124. Regrettably, the establishment of mechanisms in some states is ineffective in implementing even a minimum number of decisions: consistent failure by some states to do so raises the question of their good faith, as much as political will to comply. Are they synonymous? This clearly represents problems that go beyond the subject of this paper but political will is clearly a necessary component to fulfil human rights obligations.

125. It has been shown that a variety of different mechanisms are necessary to ensure full compliance with all manner of decisions. Different mechanisms may be necessary for different remedies. If each state adopted a mechanism from each category identified in this paper, its ability to effectively and efficiently realize its obligations under the complaints procedures would be

greatly enhanced. Some recommendations to states and the treaty bodies are suggested below. It is hoped that the examples of mechanisms in this paper can give us a glimpse into how cases will be implemented in the future more consistently.

126. Given the continual rise in the number of human rights treaties<sup>182</sup>, treaty bodies and the number of complaints received<sup>183</sup>, it is becoming increasingly important for all stakeholders to focus on implementation (in particular, of general measures) across the human rights system. The establishment of mechanisms and procedures have a practical benefit for states and authors as implementation lines are clearly identified for each type of remedy. It is also an obligation to give effect to these decisions. What should not be forgotten is that states have the primary role and responsibility to comply with treaty body decisions. No amount of enhancement of treaty body procedures or resources in the UN Secretariat can force states to comply with their obligations. Implementation mechanisms are not panaceas to solve all problems of compliance but their establishment and eventual application are indicative of a serious approach to treaty body compliance.

### **Way forward**

127. The treaty body complaints procedures have had many successes but have a long way to go to achieve a good rate of compliance. It would be welcome if 50 years on after the adoption of the ICCPR and the ICESCR the implementation of obligations under the human rights treaties, rather than mere ratification, could be the focus of all stakeholders. To this end, and in light of the precedent observations, in particular in Part II, states may consider establishing several different mechanisms and procedures to create a robust system of compliance with treaty body decisions. In doing so, they may consider what domestic implementation mechanisms they already have in place, and which could be used in anticipation of remedies recommended. Bearing in mind the different types of remedies proposed by the treaty bodies could assist states in this endeavour.

128. As a first step, establishing a mechanism of general implementation could greatly assist compliance in states. The recommendations and criteria suggested in the UN manual, on “national mechanisms for reporting and follow-up”, in tandem with the functions highlighted under “A” in Part II of this paper could be used as a guide. Such a mechanism could provide advice to authors with respect to individual measures of redress perhaps with a list of possibilities for redress based on remedies suggested by the treaty body/ies. Such a list could also take into account possibilities for general measures of redress. It could indicate whether treaty body decisions would be implemented by it or, if pertinent, the mechanism used for the implementation of regional

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<sup>182</sup> E.g. the International Law Commission is currently involved in a draft Convention on Crimes against Humanity and a number of States, supported by the OHCHR, are encouraging the creation of a new Convention on the Rights of Older Persons, <http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfOlderPersons.aspx>

<sup>183</sup> The number of complaints received and subsequently registered by the HRCttee in 2013/2014 was 132, as compared with 224 in 2014/2015 (A/69/40 and A/70/40).

decisions. Examples of such mechanisms of general implementation can be observed in Annex II, in particular, mechanisms established by the **Czech Republic, Costa Rica, Georgia, Kyrgyzstan, Lithuania and Sweden**.

129. The adoption of “enabling legislation”, as described in “B” in Part II, would create a general *legal* obligation to implement decisions on the basis of which states can ensure the establishment of other mechanisms. Examples of such mechanisms establishing a general obligation can be observed in Annex II, in particular with respect to **Kyrgyzstan, the Czech Republic and a number of years ago in Peru**.

130. The adoption or amendment of legislation may be necessary to ensure that cases can be reopened or reassessed following a treaty body decision, as described in “C” in Part II. While some states have presented the challenges to such a procedure on the basis of the non-binding nature of these decisions, other states have managed to overcome this problem e.g. by considering the treaty bodies as “international bodies” and the decision as a “new element” in the proceedings justifying its review. Examples of such mechanisms can be observed in Annex II, in particular in **Finland, Hungary, Lithuania, Norway, Poland, Portugal, and the Russian Federation**.

131. States may wish to adopt a legislative or constitutional basis for the provision of compensation after a finding of a violation by a treaty body, as described in “D” in Part II. Examples of such mechanisms can be observed in Annex II, in particular with respect to **Lithuania and Kyrgyzstan**. Denmark has a good practice of providing for authors’ costs when submitting cases to the treaty bodies. At a minimum, in the absence of such a procedure specifically set up to provide compensation like in Colombia, other procedures could be used, including the Ombudsman (Austria), the courts (Greece, Finland, Serbia) or through the relevant Ministries (Peru). Assuming these procedures are effective and provide compensation, treaty bodies have considered that they amount to satisfactory follow-up.

132. Whatever procedure is used to provide compensation it should be capable of providing full and fair compensation, within a reasonable time after the finding of a violation, for both pecuniary and non-pecuniary damages in line with the treaty body decision, and through one domestic authority. States may wish to consider in advance of a finding of a violation, the modalities of the provision of compensation, including which authority would pay and on what legal basis. The implementation of the recent abortion cases implemented by **Peru** as described in “D” in Part II is a good example.

133. States which have ratified treaties potentially impacting their immigration law (notably the CAT and/the HRCttee) may wish to consider whether to amend their law to include treaty body findings as a specific ground for reopening such cases or at a minimum as a “new element” (with or without amending legislation) upon which a review may take place, as described in “E. Expulsion cases under immigration legislation”. For particular examples of legislation, states may wish to look at legislation in **Sweden** and practices in **Switzerland** in Annex II. At a minimum, states may

wish to use existing legislation through which they can grant residence permits, release authors from detention, and grant humanitarian and compassionate leave, following a decision of a treaty body. Such examples from **Denmark, Norway, Canada and Australia** can be found in Annex II.

134. States that already have a friendly settlement procedure under the Inter-American Convention or other comparable procedures may wish to consider applying it more frequently to treaty body decisions, and adopting the best practises identified by the IACHR system, for the purpose of negotiating a settlement, as described in “F” in Part II. Such a possibility would help streamline the provision of remedies for human rights violations in the states concerned, ensuring consistency and efficiency.

135. Treaty bodies themselves also play an important role in implementation of decisions. Further development of their work on remedies, individually and/or together, for the purpose of establishing consistent and similar practices for the different types of human rights violations, would assist authors and states alike. The HRCtee has already commenced this process. This may also be an appropriate context in which to consider what the treaty bodies envisage by their regular reference to a robust “effective mechanism”.

136. A broad discussion on compensation (individually or in the context of the treaty body Chairpersons’ meeting) could also develop and establish consistency among the treaty bodies on this remedy. They could discuss *inter alia*: the types of compensation awarded, whether in certain cases to give guidance as to the quantum of compensation to be paid (while not the exact figure); whether the provision of legal aid is ever sufficient redress for a human rights violation (as argued by Denmark); and, in the event that legal aid is not provided for the submission of cases to the treaty bodies, whether costs and expenses could be considered as an appropriate remedy.

137. The HRCtee has recently been considering the effectiveness of its methodology in evaluating follow-up responses from states: a methodology also adopted by the CRPD (as described in para. 14). A harmonised approach by the other treaty bodies as to methodology would benefit all stakeholders. Whether there are ever “good reasons” for a State not to comply with a treaty body decision, is another question that may be considered in this context.

138. When relevant, treaty bodies may consider asking states during the reporting process for information on the different types of mechanisms in place to comply with treaty body decisions i.e. mechanisms for the different remedies sought. They may wish to ask specific (rather than the current general) questions on the exact nature of the mechanisms in place at the list of issue and the dialogue stage.

139. This paper has focused on the implementation of treaty body decisions by the state responsible for the violation/s. It has not touched at all on the potential role of other states in monitoring implementation: an area that may warrant further exploration in a separate study. To what extent can/should

other states parties to a treaty contribute to the implementation of decisions of the treaty bodies?

140. OHCHR's involvement in the implementation process has had limited attention in this paper. It is important to state, however, that proper secretariat support to the treaty bodies in general and in their follow-up activities in particular is a necessary pre-requisite to ensuring effective follow-up on the ground. The OHCHR and the GA may wish to acknowledge the significant work that is currently being undertaken by the secretariat under the follow-up procedures to the treaty bodies, which remains un-resourced and take the necessary measures to ensure full funding of this important procedure.

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## ANNEX 1

These are examples of good/satisfactory/partially satisfactory measures taken by states parties to follow-up on findings of violations under the individual complaints procedures of the treaty bodies

In the majority of cases, I was guided by the treaty bodies as to what they considered “satisfactory” or “partially satisfactory” implementation under the follow-up procedure. In cases where no particular view was given by a treaty body, I considered satisfactory cases where states went some way but not necessarily the whole way to comply: where they made some positive effort to comply (and where they did more than merely publish the decisions). Thus, in cases upon which follow-up information was provided prior to the creation of the follow-up rapporteur, I include examples of good follow-up which were subsequently considered as satisfactory by the Committee in other cases e.g. the provision of compensation, amendments to legislation etc. I have also included cases, for which the State provided a remedy prior to Committee deliberations, a few promising cases where the state appears to be going in the right direction with respect to a remedy, cases in which the HRCttee indicated that a finding of a violation was in itself a sufficient remedy, and a few cases where although no violation was found the state did take some positive action. In addition, I provide a sample of cases that have been discontinued by the Committee i.e without having been considered either on admissibility or the merits. Many of these cases were discontinued following the provision of remedies.

The cases below are categorized by remedy, in cases where there was more than one remedy the case is only added to one category. If the case involved a legislative change in addition to other forms of redress, I have added it to that category having arguably more impact on the state concerned.

Cases in **BOLD** were implemented by a mechanism/procedure described in Part 11 to give an idea at a glance the extent to which these mechanisms have been used in implementing decisions.

[Commutation death sentence \(around 42 individual cases which include the Jamaican cases\)](#)

- In [McLawrence v. Jamaica \(702/1996\)](#), adopted on 18 July 1997, the HRCttee found violations of articles 9, paragraphs 2, for failure to inform the author promptly of the charges against him (three weeks) and 3, due to the delay of one week in a capital case prior to being brought before a judge and for the pre-trial detention of over 16 months and 14, paragraph 3 (c), due to the delay of 34 months between trial and dismissal of appeal and consequently of article 6 (right to life), of the Covenant. The Government informed the Committee that the author’s death sentence had been commuted. (A/55/40)
- In July and September 1995, [Jamaica](#) provided the Committee with a list of detainees, whose death sentences had been commuted, following a follow-up visit by the Committee. (A/51/40) The State party sent [36 general replies](#), indicating merely that the authors’ death sentences had been commuted.<sup>184</sup> (A/69/40)

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<sup>184</sup> In its response/s to the Committee, the State indicated that while it did not believe it had a legal obligation to abide by the Committee’s decisions it would give them “serious consideration”. Thus, it developed the practice of submitting the decisions automatically to the Privy Council (the highest court of appeal for Jamaica and other British commonwealth countries). In these cases, the State merely indicated either that: “on the advice of the Privy Council” the author’s death sentence was commuted or; the crime for which the author had been convicted was reclassified as a non-capital offence resulting in commutation, as legislation enacted in 1992 was applied retroactively to prisoners on death row or; it did not

- Philippines death penalty cases from the HRCttee – the following cases were commuted following the abolition of the death penalty<sup>185</sup>: [Carpo v. Philippines \(1077/2002\)](#), adopted 28 March 2003; [Pagdawayon \(1110/2002\)](#), adopted November 2004; [Rayos \(1167/2003\)](#), adopted on 27 July 2004. All of the authors were granted executive clemency. Their death sentences were reduced to *reclusion perpetua*, a lengthy form of imprisonment. The Revised Penal Code provides that any person sentenced to *reclusion perpetua* shall be pardoned after thirty years. (A/61/40)
- In [Pinto v. Trinidad and Tobago \(232/1987\)](#), adopted on 20 July 1990, the HRCttee found a violation of article 14, paragraph 3 (d), as the legal assistance provided to the author in a capital case was neither adequate nor effective and as the imposition of the death penalty was made after violations of the Covenant. It also found a violation of article 6 (right to life). The author's sentence had been commuted to life imprisonment and on 24 October 2000 he was released after a presidential pardon. (A/56/40, and UN press release <http://www.un.org/press/en/2001/hrct599.doc.htm>)
- In [Chisanga v. Zambia \(1132/2002\)](#), adopted on 18 October 2005, the HRCttee found violations of article 6, paragraph 2, due to the mandatory nature of the death penalty in all cases of aggravated robbery with the use of firearms and which the Committee does not regard as a "most serious crime" within the context of the provision; article 6, paragraph 4 together with article 2, due to the refusal to apply the amnesty law to the author; article 7 for keeping him in doubt about his status as a death row prisoner; and article 14, paragraph 5 together with article 2, as the manner in which his right to appeal was guaranteed was called into question. On 29 July 2007, the author's death sentence was commuted to life imprisonment under article 59 of the Constitution (President's prerogative of mercy). (A/65/40)

#### [Release/Early Release \(34 cases\)](#)

- [Al Gertani v. Bosnia and Herzegovina \(1955/2010\)](#), adopted on 1 November 2013, concerned the forcible removal of an Iraqi national (married to a Bosnian citizen, with two Bosnian children) to Iraq by Bosnia, on security grounds. The HRCttee found violations of article 9 (liberty and security of person) paragraphs 1, 2 and 3, should he be removed to Iraq, violations of articles 17 and 23, on the basis of the failure of the Intelligence and Security Agency to provide information to either the author or the court on the reasons why he was considered a national security threat. Even though this case is not yet resolved, the State party has partially implemented the Committee's recommendation by releasing him after more than five years of administrative detention. (CCPR/C/113/3)

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agree with the Committee's decision and the case would not be implemented. Although the State does not provide the Privy Council's reasoning for implementation in these cases, it would appear that the conclusion of the Privy Council in the case of *Pratt and Morgan v. the AG of Jamaica* (2 November 1993) played a large part, at least in cases subsequent to 1993. In this case, the Privy Council had decided inter alia that, "in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment". A large number of cases decided by the Committee would have gone beyond the five-year period. To prevent cases ending back in the Supreme Court it was advised in the *Pratt and Morgan* decision that the Governor-General refers all such cases to the Judicial Committee of the Privy Council with the guidance to commute these cases to life imprisonment. On 23 October 1997, Jamaica denounced the Optional Protocol, alleging that the process before the Committee was time consuming and that it was preventing the carrying out of executions. Some of this information is in the original files in the Secretariat. See also Heyns and Viljoen, in "The Impact of the United Nations Human Rights Treaties (2002)". In its concluding observations in October 2016, the Committee encouraged the State to re-accede to the Optional Protocol (see CCPR/C/JAM/CO/4).

<sup>185</sup> Efforts made in the Philippines in 2016 to re-introduce the death penalty are disappointing to say the least and would create a very poor precedent for other states. It is hoped that the bill to do so will be defeated when presented to Parliament in early 2017.



- In [Bozize v. Central African Republic \(428/1990\)](#), adopted on 7 April 1994, the HRCttee found violations of articles 7 (torture, inhuman or degrading treatment) relating to injuries received in detention, 9 (liberty and security of person) as he was not brought promptly before a judge and couldn't contest the lawfulness of arrest and was denied access to counsel, 10 (conditions of detention) due to poor conditions of detention and 14, paragraph 3 (2), as he had not been tried at first instance after four years of detention. By note verbale of 14 March 1996, the State party informed the Committee that Mr. Bozize was released from detention in 1992 and allowed to travel to France, where he established temporary residence. Mr. Bozize founded his own political party in France and was a presidential candidate for the general elections in 1992 and in 1993. The State party added that Mr. Bozize was subsequently reintegrated into the country's civil service, that he is entirely free in his movements and that he enjoys all civil and political rights guaranteed under the Covenant. (A/51/40)
- In [Bolanos v. Ecuador \(238/1987\)](#), adopted on 26 July 1989, the HRCttee found violations of article 9, paragraphs 1 and 3, as the author was deprived of liberty contrary to domestic law (for 5 years prior to indictment) and not tried within a reasonable time and article 14, paragraphs 1 and 3 (c), of the Covenant, because he was denied a fair hearing without undue delay. The State party subsequently informed the Committee that the author had been released having been found not guilty of the charges against him and that the State assisted him in finding employment. (CCPR/C/115/3)
- In [Domukovsky v. Georgia and Tsiklauri v. Georgia \(623/1995, 624/1995\)](#), adopted on 6 April 1998, the HRCttee found violations of articles 9 paragraph 1 and 2 for unlawful arrest and failing to provide reasons for arrest until one year into detention, 7, 10, paragraph 1, for torture and inhuman treatment in detention, 14, paragraphs 3 (d) for the state's failure to ensure access to a lawyer of their own choosing at all times and 14, paragraph 5, for lack of recourse to a full appeal (judicial review only). In 1998, the State party indicated that they had both been released, the former by Presidential pardon. (A/54/40)
- In [Clive Johnson v. Jamaica \(592/1994\)](#), adopted on 25 November 1998, the HRCttee found violations of article 14, paragraph 3 (d) for the absence of legal representation for the author at the preliminary hearing, article 6, paragraph 5, as the death sentence was imposed while the author was under 18, thus the imposition was void *ab initio*, his detention on death row also constituted a violation of article 7. The State party, by submission of 26 March 1999, informed the Committee that the Privy Council had supported the Committee's decision and that the author was released (AR/54/40, AR/61/40, and AR/69/40)
- [El-Megreisi v. Lybia \(440/1990\)](#), adopted on 23 March 1994, where the HRCttee found violations of articles 7 and 10, paragraph 1 for having been subjected to prolonged incommunicado detention in an unknown location, and thus a victim of torture and cruel and inhuman treatment and article 9 for arbitrary arrest and detention, as no charges were ever brought against him. Follow-up information from the author informed the Committee that his brother was released in March 1995. (A/69/40)
- [Marais v. Madagascar \(49/1979\)](#), adopted on 24 March 1983, and [Wight v. Madagascar \(115/1982\)](#), adopted on 1 April 1985, the HRCttee found violations of articles 7, 10 and 14 due to inhuman conditions of detention and lack of fair trial guarantees. The State indicated that it released the authors. (A/61/40)
- In [Carranza Alegre, Marlem v. Peru \(1126/2002\)](#), adopted on 25 October 2005, the HRCttee found violations of articles, 7 (torture), 9 (liberty and security of person), and 14 (fair trial guarantees), together with 2, paragraph 1, with respect to a trial that took place in private with "faceless judges", the identity and status of whom were not known. The Committee welcomed the author's release from prison following a judgment of the Supreme Court dated 17 November 2005 in which all charges of terrorism against her were dropped. Following a request by the Ministry of Justice, through its National Human Rights Council, the author was reinstated in her post as a doctor from 27 April 2007. It would appear that there was a similar outcome in the case of [Ricardo Ernesto Gómez Casafranca \(981/2001\)](#), adopted in 22 July 2003, where the author was granted a new trial under new anti-terrorism law (apparently

the earlier one was rescinded after findings of violations under the inter-American system) and the author was freed after a court decision of 2 March 2007. (See A/63/40 and CCPR/C/PER/Q/5/ADD.1 (Annex II, Replies to the list of issues State party considered by Committee in March 2013))

- In [Quispe Roque v. Peru \(1125/2002\)](#), adopted on 21 October 2005, the HRCttee found violations of article 9 (illegal arrest) and 14 with respect to a trial held in private with “faceless judges”. The Committee welcomed information from the State party that the author was released on 20 June 2007. (A/63/40)
- In [Arguedas v. Peru \(688/1996\)](#), adopted on 14 August 2000, the HRCttee found violations of article 10, paragraph 1, for poor conditions of detention, 9 (arbitrary arrest and detention) with respect to the manner of her arrest; 14 (fair trial guarantees), paragraph 1, with respect to her trial by a court made up of “faceless judges”; and 14, paragraph 3 (c), with respect to the delay in the completion of the proceedings. On 11 December 2002, the State party informed the Committee that further to a decision of the Criminal Court of Lima, the author was released on 6 December 2002. (A/58/40)
- In several cases against Sierra Leone, the HRCttee found violations of article 6 (right to life) and 14, paragraph 5, as the convicted persons were not granted an effective right of appeal following death sentences from conviction from court martial: [Mansaraj et al. v. Sierra Leone \(839/1998\)](#), adopted on 16 July 2001; [Gborie Tamba, v. Sierra Leone \(840/1998\)](#), adopted on 16 July 2001; [Sesay et al. v. Sierra Leone, \(841/1998\)](#), adopted on 16 July 2001. The State party informed the Committee that a right of appeal from courts martial had been re-instated and that all of the authors had been released. (CCPR/C/80/FU1)
- [Shalto v. Trinidad & Tobago \(447/1991\)](#), adopted on 4 April 1995, the HRCttee found that the delay of four years between the judgement of the Court of Appeal and the beginning of a retrial could not be deemed compatible with the provisions of article 9, paragraph 3 and 14, paragraph 3 (c). The author was subsequently released following Presidential pardon. (A/53/40)
- Numerous cases against [Uruguay](#) and considered by the HRCttee in the late 70s/early80s, involved violations of articles 9, 10, 7 and 14 for incommunicado detention, poor conditions of detention, solitary confinement, inhuman and degrading treatment and torture, arbitrary detention, and lack of fair trial guarantees. In many of these cases, the authors were released including: [Massera \(5/1977\)](#), adopted on 15 August 1979; [Pietraoia \(44/1979\)](#), adopted on 27 March 1981, [Weinberger Weisz \(28/1978\)](#), adopted on 29 October 1980, [Alberto Altesor \(10/1977\)](#), adopted on 29 March 1982, [Celiberti \(56/1979\)](#), adopted on 29 July 1981 (see A/39/40); [Caldas \(43/1979\)](#), adopted on 21 July 1983, [Barbato Dermit \(84/1981\)](#), 21 October 1982, [Bequio \(88/1981\)](#), adopted on 29 March 1983, [Cabreira de Estradet \(105/1981\)](#), adopted on 21 July 1983, were all released pursuant to article 10 of the Law on National Pacification, as they were imprisoned under “prompt security measures” (A/61/40); [Scarone \(103/1981\)](#), adopted on 4 November 1983, [Izquierdo, \(73/1980\)](#), adopted on 24 October 1980, [Nieto \(92/1981\)](#), adopted on 25 July 1983, and [Romero \(85/1981\)](#), adopted on 29 March 1984, were pardoned by virtue of Law 15.737 and released on 10 March 1985; [Antonaccio \(63/1979\)](#), adopted on 28 October 1981, [Vasiliskis \(80/1980\)](#), adopted on 31 March 1983, [Lluberas \(123/1982\)](#), adopted on 6 April 1984 were released on 14 March 1985 by virtue of the same law. (A/61/40)<sup>186</sup>
- In [Siragev v. Uzbekistan \(907/2000\)](#), adopted on 1 November 2005, the HRCttee found violations of article 7, as the author was tortured and ill-treated in prison, 14, paragraph 3 (b), as he was not given the facilities to prepare his defence or communicate with counsel, and article 6 for the imposition of the death penalty where other provisions had been violated. Prior to the Committee’s decision, the death penalty was commuted. Subsequently, under a Presidential Amnesty Decree, Siragev’s sentence was reduced, and he was release. (A/61/40)

#### [Avoid Removal/Deportation/Expulsion \(70 cases\)](#)

<sup>186</sup> It is possible that other authors were also released but it is not clear from the information provided in the annual reports.

- In the case of [Kwok v. Australia \(1442/2005\)](#), adopted on 23 October 2009, the HRCttee found a violation of article 9 (arbitrary detention) for the four years she spent in immigration detention and a potential violation of articles 6 (right to life) due to the possible application of the death penalty and 7 (torture, inhuman or degrading treatment), if she were removed to China without adequate assurances. The Committee considered satisfactory the State party's reply that Ms. Kwok had been granted a permanent residence visa, at the request of the Minister for Immigration and Citizenship made on 14 September 2010, under article 417 of the Migration Act 1958, and that she had been released from community detention. (AR/67/40)
- In several immigration cases against Australia, while the State party contested its decisions the HRCttee's suggested remedies were taken on board by the state: [Winata v. Australia \(930/2000\)](#), adopted on 26 July 2001, [Madaferri v. Australia \(1011/2001\)](#), adopted on 28 July 2004; and [C. v. Australia, \(900/1999\)](#), adopted on 28 October 2002 In [Winata](#), the Committee found that the deportation of Indonesian parents of an Australian citizen (who was 13 years old) would amount to arbitrary interference with the family, contrary to articles 17 and 23 of the ICCPR; and that, in relation to the child, Australia had failed to provide him with the necessary measures of protection as a minor. It requested the State party not to remove them from Australia until they 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. The State party indicated that there were no plans to remove them from Australia. (A/62/40) In [Madaferri](#), the Committee found that the State party had violated Mr. Madaferri's rights under articles 10, paragraph 1, due to his conditions of detention and that his removal, if implemented, would constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors. The Committee regarded as satisfactory the information provided from the State party that Mr. Madafferi was granted a spouse (migrant) permanent visa on 3 November 2005. (A/61/40) In [C.](#) the author had been granted refugee status as an Assyrian Christian but faced deportation after committing serious crimes. The Committee found a breach of articles 7 and 9 for having been held in protracted detention leading to the development of a psychiatric illness and recommended that he not be deported to Iran where he would face persecution and be unlikely to have available effective health treatment. The Committee welcomed the author's release on 10 May 2005 in home detention. (A/62/40)
- In [Ke Chun Rong v. Australia \(416/2010\)](#), adopted on 5 November 2012, where the CAT found a potential violation of article 3 (non-refoulement), if the author was returned to their country of origin the Committee regarded as satisfactory the State party's response to grant them a residence permit. (A/70/44)
- In [Mansour Ahani v. Canada \(1051/2002\)](#), adopted on 23 March 2004, where the HRCttee found violations of articles 9, and 13 in conjunction with 7, for having failed to afford the author timely judicial review of his detention and appropriate procedural safeguards in the proceedings leading to his removal to Iran. Under the follow-up procedure, Canada indicated to Iran that it expects it to comply with its international human rights obligations, including with respect to the author. 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. The Canadian Embassy in Tehran visited Mr. Ahani in October 2002, and he did not complain of ill-treatment. In 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. (A/61/40)

- In both [Thuraisamy v. Canada \(1912/2009\)](#), adopted on 31 October 2012, and [Shakeel v. Canada \(1881/2009\)](#), adopted on 24 July 2013, the HRCttee found potential violations of article 7 (and additionally 6, paragraph 1 with respect to Shakeel) of the Covenant, should the authors be deported to Sri Lanka and Pakistan, respectively. Canada informed the Committee that the authors' humanitarian and compassionate (H&C) applications were approved in principle. After the requisite background checks, their applications for permanent residence will be determined and permanent resident status formally conferred. (CCPR/C/112/R.3)
- In [Pillai v. Canada \(1763/2008\)](#), adopted on 25 March 2011, in which the HRCttee determined that the author's removal to Sri Lanka would breach article 7 of the ICCPR, the Committee closed the follow-up consideration of the case at its 105<sup>th</sup> session, with a note of satisfactory implementation of its recommendation, after being informed that the authors were granted permanent residence status on humanitarian and compassionate grounds. (A/68/40)
- In [Singh v. Canada \(319/2007\)](#), adopted on 30 May 2011, which related to an extradition to India, the HRCttee found as satisfactory information from the State party on 18 November 2011 that it had decided not to return the complainant to India. (A/68/44)
- In [X. v. Denmark \(2007/2010\)](#), adopted on 26 March 2014, the HRCttee was of view that the author's expulsion to Eritrea would, if implemented, violate article 7 of the Covenant. The State party subsequently indicated that the Refugee Appeals Board decided to reopen the author's asylum case. By decision of 27 May 2014, the Board decided to grant the author a residence permit under article 7(2) of the Danish Aliens Act. As the author has a residence permit, he will not be returned to Eritrea. (CCPR/C/115/3).
- In [Byahuranga v. Denmark \(1222/2003\)](#), adopted on 1 November 2004, the HRCttee was of the view that the author's expulsion to Uganda would, if implemented, violate his rights under article 7 of the Covenant. The Committee regarded as satisfactory 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. (A/61/40)
- In [Husseini v. Denmark \(2243/2013\)](#), adopted on 24 October 2014, the HRCttee found a potential violation of article 23 (1) in conjunction with article 24, if the author were to be removed to Afghanistan. The State party brought the case before the courts under section 50 of the Aliens Act, and proceeded to a review of the decision to expel him subject to a permanent re-entry ban. The court did not find for the author and if he does not leave voluntarily he will be forcibly removed. As the Committee's recommendation in this case was a procedural one (to "review" the decision to expel him), the Committee considered the implementation satisfactory<sup>187</sup>. (CCPR/C/118/3)
- In [O.O.A. V. Denmark \(2288/2013\)](#), adopted on 23 July 2015, the HRCttee found potential violations of articles 6 and 7 in the event of the author's removal to Nigeria without full reconsideration of her asylum claim and also requested the State to refrain from expelling the author while her request was being considered. While the author's claim for asylum was not ultimately granted by the State party, the Committee gave the State an "A" for having implemented its recommendation to fully reconsider her claim and refraining from removing her and her daughter while the review was ongoing. (CCPR/C/118/3)
- In [A.H. v. Denmark \(2370/2014\)](#), adopted on 16 July 2015, the HRCttee found a violation of article 7 for the forcible removal of the author to Afghanistan. On the basis of the Committee's request to review the decision and to return the author to Denmark, the State party reopened the case, allowed the author to

<sup>187</sup> The HRCttee's has recently started to adopt such procedural recommendations in deportation cases on a more regular basis. It may be interesting to explore the reasons behind this trend and its effect on compliance at a later point.

- re-enter Denmark and ultimately granted him asylum under section 7 (2) of the Aliens Act. The Committee granted the State an “A”. (CCPR/C/118/3)
- In **X. v. Denmark (2389/2014)**, adopted on 22 July 2015, the HRCttee found a potential violation of article 7 in the event that the author was to be removed to Iran. Following a reconsideration of his asylum claim as requested by the Committee, the author was granted residence under section 7 (1) of the Aliens Act. The Committee granted the State an “A”. (CCPR/C/118/3)
  - In **S.A v. Denmark (53/2013)**, adopted on 19 November 2015, the CEDAW found violations of articles 2 (c) and (d) and requested the State to refrain from forcibly returning the author to Pakistan. On 5 January 2016, the Refugee Appeals Board reopened the case and on 18 April 2016 it granted a residence permit to the author under section 7(2) of the Danish Aliens Act. (CEDAW/C/WGCOP/64/L.1)
  - With respect to the CAT’s findings in **Amini v. Denmark (339/2008)**, adopted on 15 November 2010, on 15 December 2010, the Refugee Appeals Board decided to grant the complainant a Danish residence permit under section 7, paragraph 2, of the Danish Aliens Act, with respect to a return to Iran. (A/66/44)
  - In **El-Hichou v. Denmark (1554/2007)**, 22 July 2010, the HRCttee found that the decisions not to allow the reunification of the minor author and his father in the State party’s territory and the order to leave the State party would, if implemented, entail violations of articles 23 and 24 of the Covenant. The Committee closed consideration of this case upon receiving the State party’s response that the Danish Ministry of Refugee, Immigration and Integration Affairs decided that the author’s continued stay in Denmark should be based on a residence permit issued under the Danish Aliens Act, section 9 (c), subsection 1, paragraph 1 (stating that “upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including with regard for family unity”). In its reply to the list of issues, report to be reviewed in July 2016, the State party provided information on general measures taken to improve the opportunities for foreign children to exercise the right to family life with a parent in Denmark as a result of this case. (A/66/40, CCPR/C/DNK/6)
  - In **K. H. v. Denmark (464/2011)**, adopted on 23 November 2012, the State party assisting the author with his return to Denmark from Afghanistan and granted him a resident permit (AR/68/44).
  - In the following cases, **X and Z v. Finland (483/2011 and 485/2011)**, adopted on 12 May 2014, where the CAT found potential violations of article 3 (non-refoulement) if the authors were returned to their country of origin due to irregularities in the asylum procedure the Committee regarded as satisfactory the State party’s response that they would have the opportunity to reapply for protection. (A/70/44)
  - In **X. v. Korea (1908/2009)**, adopted on 25 March 2014, the HRCttee found that the author as a Christian convert and theologian would face a risk if forcibly returned to the Islamic Republic of Iran contrary to article 6, paragraph 1 (right to life), and article 7 (torture and inhuman treatment) of the Covenant. On 22 April 2014, the Ministry of Justice revoked the deportation order against the author and on 12 May 2014, granted him a G-1-5 visa, which is generally granted to asylum seekers, so that he may lawfully remain in Korea (Follow-up report, CCPR/C/116/3).
  - In **Ktiti v. Morocco (419/2010)**, adopted on 26 May 2011, the CAT found a violation of article 3 (non-refoulement) with respect to the extradition of an individual to Algeria and article 15 with respect to the State party’s reliance in the extradition proceedings on a statement made under torture. The Committee considered satisfactory the complainant’s release from Salé prison on 2 February 2012 and the State party’s agreement not to return him to Algeria. Counsel expressed, on behalf of the complainant’s family, great appreciation for the Committee’s decision, which enabled the complainant to be released. (A/67/44 and A/68/44)
  - In an article 3 case, **Eftekhary v. Norway (312/2007)**, adopted on 25 November 2011, the CAT regarded as satisfactory the State party’s response to grant the complainants residence permits (A/70/44).

- In *Alzery v. Sweden* (1416/2005), adopted on 25 October 2006<sup>188</sup>, the HRCttee found a violation of article 7 due to the expulsion (now known as “extraordinary rendition”) of Mr. Alzery to Egypt (with the involvement of USA government agents and relying on diplomatic assurances from the receiving state. The author was subsequently tortured and ill-treated in Egypt. A settlement of 3,160,000 SEK was awarded to the author (approximately 500,000 CHF) as compensation. The author was also granted a permanent residence permit in July 2012. (A/62/40, CCPR/C/SWE/Q/6/Add.1, CCPR/C/SWE/CO/6)
- In the following cases against Sweden the CAT regarded as satisfactory information from the State party that the authors in all of these article 3 removal cases were granted residence permits: *Tala v. Sweden* (43/1996), return to Iran, adopted on 1 November 1996; *Avedes Hamayak Korban v. Sweden* (88/1997), return to Iraq, adopted on 16 November 1998; *Ali Falakflaki v. Sweden* (89/1997), return to Iran, adopted on 8 May 1998; *Orhan Ayas v. Sweden* (97/1997), return to Turkey, adopted on 12 November 1998; *Halil Haydin v. Sweden* (101/1997) return to Turkey, adopted on 20 November 1998; *A.S. v. Sweden* (149/1999), return to Iran, adopted on 24 November 2000; *Chedli Ben Ahmed Karoui v. Sweden* (185/2001), return to Tunisia adopted on 8 May 2002; *T.A. v. Sweden* (226/2003), return to Bangladesh, adopted on 6 May 2005; *C.T. and K.M. v. Sweden* (279/2005), return to Rwanda, adopted on 17 November 2006; and *Tapia Páez v. Sweden* (39/1996), return to Peru, adopted on 28 April 1997; *Kisoki v. Sweden* (41/1996), return to DRC, adopted on 8 May 1996. (A/65/44 and A/66/44)
- In *Njamba and Balikosa v. Sweden* (322/2007), adopted on 14 May 2010, in a decision of the CAT with respect to a return to the DRC, the Migration Board decided on 9 June 2010 to grant the complainants permanent residence in Sweden and enclosed the copies of the decisions. (A/66/44)
- *Agiza v. Sweden* (233/2003), adopted on 20 May 2005, is a decision of the CAT and the companion case to *Alzery v. Sweden* (1416/2005) considered by the HRCttee. *Agiza* was considered by the CAT and involved an expulsion to Egypt (now known as “extraordinary rendition”) with the involvement of USA government agents and relying on diplomatic assurances from the receiving state. The complainant alleged mistreatment upon his return to Egypt. The CAT found a violation of article 3 (non-refoulement) due to his immediate expulsion to Egypt without giving him an opportunity to have his case reviewed by an independent body. Subsequently, the State party enacted a new aliens act, monitored his treatment in prison in Egypt, granted compensation of SEK 3,097,920 (379,485.20 USD) in October 2008 for the violations caused and a permanent residence permit based on family reunification granted on 4 July 2012. (AR/67/44)
- In *X. v. Sweden* (1833/2008), adopted on 1 November 2011, the HRCttee found violations of 7 and 6, paragraph 1 with respect to the forced deportation of a homosexual man to Afghanistan. The author was granted a residence permit and support in facilitating his return to Sweden. Non-repetition measures were put in place, including the adoption and dissemination of legal briefs concerning the assessment of the risk alleged by asylum seekers in relation to sexual orientation for the use of migration officials. (A/69/40)
- In *M. I. v. Sweden* (2149/2012), adopted on 25 July 2013, the HRCttee found a potential violation of article 7 if the decision to forcibly return a lesbian woman to Bangladesh was implemented. The author was subsequently granted permanent residence in Sweden. Projects and activities of the Migration Board aimed at enhancing the Board’s competence in LGBT issues were also undertaken. (CCPR/C/112/R.3)
- In the following cases, the CAT found potential violations of article 3 in the event of a removal by the State: *Chahin v. Sweden* (310/2007), adopted on 30 May 2011, on 8 December 2011, the Migration Court in Malmö decided to cancel the expulsion order of the complainant (despite the fact that he had been expelled by the criminal court following conviction for manslaughter) and to grant him

<sup>188</sup> It would appear that the amendment to the immigration law was made after this case and thus follow-up to it was not covered by that mechanism.

permanent residence, declaration of refugee status and travel documents. In [Mondal v. Sweden \(338/2008\)](#), adopted on 23 May 2011, on 15 July 2010, the Migration Board decided to grant the complainant a permanent residence permit. In [Güclü v. Sweden \(349/2008\)](#), adopted on 11 November 2010, on 16 May 2002, and [Aytulun and Güclü v. Sweden \(373/2009\)](#), adopted on 19 November 2010, the Swedish Migration Board decided to grant the complainants permanent residence permits, under chapter 12, section 22, paragraph 3, of the Aliens Act to avoid a deportation to Turkey. In [S.M. et al. v. Sweden, 374/2009](#), adopted on 21 November 2011, the Swedish Migration Board decided to grant the complainants permanent residence permits on 16 February 2012. The complainants thus do not risk deportation to Azerbaijan. In [Bakatu-Bia v. Sweden \(379/2009\)](#), adopted on 3 June 2011, on 15 July 2010, the Migration Board decided to grant the complainant a permanent residence permit and not to return the complainant to DRC. In [Jahani v. Sweden \(357/2008\)](#), adopted on 23 May 2011, the Swedish authorities decided to accept Mr. Jahani as a refugee and not to send him back to the Islamic Republic of Iran on 24 August 2011. (A/67/44)

- In [Njamba and Balikosa v. Sweden \(322/2007\)](#), adopted on 14 May 2010, the Swedish authorities granted residence permits to the complainants. (A/70/44)
- In [M.A.M.A. et al. v. Sweden \(391/2009\)](#), adopted on 23 May 2012, on 12 and 13 July 2012, the Swedish Migration Board issued permanent residence permits to all complainants as refugees thus confirming that they did not risk deportation to Egypt. (AR/68/44)
- In [Gbadjavi v. Switzerland \(396/2009\)](#), adopted on 1 June 2012, on 19 July 2012, the Federal Office for Migration granted the complainant refugee status and a residence permit in Switzerland, avoiding expulsion to Togo. (AR/68/44)
- In [Khalsa-Singh et al. v. Switzerland \(336/2008\)](#), adopted on 26 May 2011, the Federal Office for Migration granted the complainant an “F” residence permit in Switzerland. In [R.D. et al. v. Switzerland \(558/2013\)](#), adopted on 13 May 2106, the complainants were granted residence permits. (CAT/C/59/3)
- In the following cases against Switzerland the CAT regarded as satisfactory information from the State party that the authors in all of these article 3 (non-refoulement) cases were granted residence permits, asylum status or “temporary/provisional admission”: [Mutombo v. Switzerland \(13/1993\)](#), return to “Zaire”, adopted on 27 April 1994; [Alan v. Switzerland \(21/1995\)](#) return to Turkey, adopted on 8 May 1996; [Aemei v. Switzerland \(34/1995\)](#), return to Iran, adopted on 29 May 1997; [V.L. v. Switzerland \(262/2005\)](#), return to Belarus, adopted on 20 November 2006; [El Rgeig v. Switzerland \(280/2005\)](#), return to Libyan Arab Jamahiriya, adopted on 15 November 2006; and [Iya v. Switzerland \(299/2006\)](#), return to DRC, adopted on 16 November 2007. (A/65/44 and A/66/44)
- In [Faragollah Abolghasem Faragollah et al. v. Switzerland \(381/2009\)](#), adopted on 21 November 2011, return to Islamic Republic of Iran, and [Harminder Singh Khalsa et al. v. Switzerland \(336/2008\)](#), adopted on 26 May 2011, return to India, the authors were granted temporary/provisional admission (CAT/C/CAT/CHE/7).
- In [A.K. v. Switzerland \(544/2013\)](#), adopted on 8 May 2015, the complainants who risked deportation to Turkey were granted refugee status. (CAT/C/56/2)
- In [Combey Brice Magloire Gbadjavi v. Switzerland \(396/2009\)](#), adopted on 1 June 2012, return to Togo, the Federal Office for Migration reviewed the author’s case and having recognised him as a refugee granted him asylum by decision of 19 July 2012. (A/68/44 and CAT/C/CHE/7)
- In the following cases, where the CAT found potential violations of article 3 (non-refoulement) if the authors were returned to their country of origin the Committee regarded as satisfactory the State party’s response to grant them residence permits/ or where the Committee had found irregularities in the asylum procedure the opportunity to reapply for protection: [the Khademi et al. v. Switzerland \(473/2011\)](#), adopted on 14 November 2014; [Tahmuresi v. Switzerland \(489/2012\)](#), adopted on 26 November 2014; [Azizi v. Switzerland \(492/2012\)](#), adopted on 27 November 2014; [Fadel v. Switzerland \(450/2011\)](#),

adopted on 14 November 2014; and *X. v. Switzerland* (470/2011), adopted on 24 November 2014, and (481/2011) *K.N., F.W. and S.N v. Switzerland*, adopted on 5 November 2012;. (A/70/44)

- Following a CAT decision under article 3, *A.J (91/97) v. the Netherlands*, adopted on 13 November 1998, relating to a return to Tunisia, the State party refrained from expelling the complainant to Tunisia and in response to his request for asylum provided him with a residence permit valid from 2 January 2001 to be renewed on 2 January 2011. (A/66/44)

#### Legislative Amendment/Repeal (30 cases)

- In *Marques v. Angola* (1128/2002), adopted on 29 March 2005, where the HRCttee found violations as: the author's arrest and detention were not reasonable or necessary, and were therefore arbitrary infringements of his liberty and security in violation of article 9(1); he was not promptly informed of the reasons for his arrest or the charges against him, in violation of article 9(2); his incommunicado detention denied him the right to be brought before a judge, in violation of article 9(3); he was denied counsel at an initial stage, and denied his right to habeas corpus in violation of article 9(4); the restrictions on his freedom of speech were not provided for in law or necessary to achieve a legitimate aim, violating his right to criticize or publicly evaluate the government without fear of punishment, in contravention of article 19(2); and his prevention from leaving Angola, and the subsequent confiscation of his passport, had no basis in law and violated his freedom of movement under article 12(1). Apparently, amendments were made to Angola's press law which partially remedied portions of the criminal law under which Marques had been convicted. This information was not brought to the attention of the Committee<sup>189</sup>. (Information from Open Society, From Judgement to Justice: See <https://www.opensocietyfoundations.org/litigation/marques-v-angola>)
- In *Toonen v. Australia* (488/1992), adopted on 31 March 1994, the HRCttee found that the criminalization by the Tasmanian state of consensual sexual contact between men in private was an arbitrary interference with Mr. Toonen's right to privacy (article 17). It also found that the prohibition on discrimination on the basis of 'sex' found in articles 2, para. 1(equality) and 26 (discrimination) of the Covenant includes sexual orientation. The Committee considered as positive, Australia's remedy to enact the Human Rights (Sexual Conduct) Act 1994 (Cth), which effectively decriminalised consenting sexual activity between adults throughout Australia and prohibited laws that arbitrarily interfere with the sexual conduct of adults in private. Tasmania subsequently amended its Criminal Code so as to make it consistent with the Committee's decision. (A/51/40)
- In *Horvath v. Australia* (1885/2009), adopted on 27 March 2014, the HRCttee found that the author had been deprived of an effective remedy after she was exposed to police abuse, contrary to article 2, para.3, in connection with articles 7 (torture, cruel inhuman or degrading treatment), 9 (arbitrary arrest), and 17 para.1 (right to privacy), of the Covenant. The Committee considered as satisfactory the State party's reply that relevant authorities in the state of Victoria had apologised and provided compensation calculated by taking into account damages awarded by domestic courts, the amounts the author had already received, the passage of time and the circumstances of the case. The Victoria Police Act was also amended to ensure that victims of tortious police misconduct are compensated, and that police officers may be personally liable for serious and wilful misconduct. If the victim cannot recover compensation from the police officer responsible, the state must pay compensation. (Follow-up report, CCPR/C/113/4)
- In the case of *Young v Australia* (941/2000), adopted on 6 August 2003, the HRCttee found that the Australian veterans' entitlements laws, under which same-

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<sup>189</sup> In response to a question on this case during a dialogue with the State party in March 2013, the delegation indicated that, "currently Mr. Rafael Marques de Morais fully enjoyed his civil and political rights and was carrying out his activities as a journalist. Pursuant to the Constitution, Mr. Marques de Morais was entitled to initiate legal proceedings to seek compensation for the damages he had allegedly suffered." (CCPR/C/SR.2959)



sex couples are not entitled to the same veterans pensions as opposite-sex couples were discriminatory (article 26). The State party indicated that on 27 November 2008, Parliament passed amending legislation to remove discrimination against same-sex couples from the Veterans' Entitlements Act 1986 (the VEA), which came into force on 1 July 2009, same-sex partners of deceased and incapacitated war veterans will be entitled to apply for a pension under section 13 of the Act. While the amendments will not have retrospective effect, they will allow a same-sex partner of a veteran who has died before 1 July 2009 to access payments under the VEA from when the amendments come into effect. The reforms will not provide for retrospective payments under the VEA from the date of a partner's death to the commencement of reforms on 1 July 2009. However, affected persons may apply for an 'act of grace' payment or ex gratia payment for these amounts in conjunction with the prospective pension entitlement<sup>190</sup>. (Replies to Lists of issues, 2009, CCPR/C/AUS/Q/5/Add.1)

- In [Karakurt v. Austria \(965/2001\)](#), adopted on 4 April 2001, the HRCttee considered it unreasonable to base a distinction between aliens concerning their capacity to stand for election for a work council solely on their different nationality thus finding a violation of article 26 (discrimination). On 21 February 2006, the State party submitted that the Austrian legal system had been amended in accordance with the Committee's Decision. 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. (A/61/40)
- In [Lederbauer v. Austria, 1454/2006](#), adopted on 13 July 2007, the HRCttee found a violation of article 14, paragraph 1 due to the unreasonable delay of over 7 and a half years from the author's appeal of his suspension to the High Administrative Court (6/2/95) to when the Court upheld the suspension (29/11/02). As at 1 January 2014, the Austrian legal protection mechanism against individual decisions of administrative authorities has been fundamentally reorganized. A federal administrative court, a federal financial court and regional administrative courts of the Länder were established to hear appeals against decisions taken by administrative authorities with the aim of reducing the average duration of proceedings. (CCPR/C/113/3)
- In [Bizouarn and Fillastre v. Bolivia \(336/1998\)](#) adopted on 6 November 1991, the HRCttee found a violation of article 14, paragraph 3 (c) (undue delay), where the determination of charges against the accused had not resulted in a judgement at first instance nearly four years after their indictment and article 9, paragraphs 2 and 3 as the authors were held in custody for ten days before being brought before any judicial instance and without being informed of the charges against them. In its response the State party indicated that the authors were released from detention on 3 June 1993 and immediately left Bolivia. The State party also amended its legislation relating to bail to comply with article 9, paragraph 2 and that the judicial system was reformed to avoid violations of article 9, paragraph 3. (A/52/40)
- In [Sandra Lovelace v. Canada \(24/1977\)](#), adopted on 30 July 1981, the HRCttee found a violation of article 27 (minority rights) as the author, a Maliseet Indian person, had been denied, by operation of the Indian Act, the legal right to reside on the Tobique reserve because she had married a non-Indian. Canada subsequently amended the Indian Act removing any discriminatory provisions. (A/38/40)
- [Ballantyne, Davidson and McIntyre v. Canada \(359/1989 and 385/1989\)](#), adopted on 31 March 1993, the HRCttee found a violation of article 19(2) based on the basis of a law which did not allow posting signs in English in a predominantly francophone province of Quebec. The State party stated the State party stated that sections 58 and 68 of the Charter of the French Language, the legislation, which was central to

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<sup>190</sup> According to the State party in the dialogue with the Committee in 2009, "...Mr. Young would be entitled to apply for benefits if he met the regular criteria, although, given the fact that the amendments would take effect only in July, he might have to wait, or apply for an ex gratia benefit as a retrospective payment." (CCPR/C/SR.2609 and CCPR/C/SR.2610),

the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994. (A/61/40)

- In **Torres v. Finland (291/1988)**, adopted on 26 March 1990, the HRCttee found a violation of article 9, paragraph 4, as the author, an alien subject to extradition, had been unable to challenge the legality of his detention before a court for certain periods following his arrest. On 15 May 1991, the State party informed the Committee that the Aliens Act had been revised by a Parliamentary Act that took effect on 10 May 1990, in order to make the provisions governing the detention of aliens compatible with the Covenant. Moreover, the Covenant had been incorporated in Finnish domestic law making it directly applicable before Finnish courts and authorities. **In 8 January 1991, the Finnish Ministry of the Interior agreed to pay 7,000 Finnish marks to Mr. Torres compensation. However, the author appealed to court and was eventually awarded 20,000 Finnish marks plus legal expenses from the Supreme Administrative Court (A/46/40 & Heyns and Viljoen)**
- In **Karttunen v. Finland (387/1989)**, adopted on 23 October 1992, the HRCttee found a violation of article 14, paragraph 1, on the basis of the failure of the higher courts to rectify claims of impartiality of the first instance judge in a case at which the author was convicted of fraudulent bankruptcy and was not entitled to oral proceedings in the Court of Appeal. By submission of 20 April 1999, the State party informed the Committee that the Code of Judicial Procedure, at issue in the case, had been amended effective 1 May 1998. According to the new provisions of the Code, oral hearings could be requested by any of the parties before the court of appeal. (A/54/40)
- In **Kivenmaa v. Finland (412/1990)**, adopted on 31 March 1994, the HRCttee found violations of articles 19, paragraph 1 (a) and (b) (freedom of expression) as the State party failed to invoke any law or demonstrate how the restriction on raising a banner were necessary within the context of article 19; and article 21 as the gathering of several individuals publicly announced could not be regarded as a demonstration. **On 20 April 1999, the Government of Finland informed the Committee that the author would be compensated and that a new Act on the Freedom of Assembly had been approved by Parliament on 17 February 1999 and would enter into force in autumn 1999.** (A/54/40)
- In **Vladimir Kulomin v. Hungary (521/92)**, adopted on 22 March 1996, the HRCttee found a violation of article 9, paragraph 3 as the public prosecutor, who reviewed the author's pre-trial detention on several occasions, could be regarded as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9(3). In 1996, the State party indicated that legislative changes made following the author's conviction will prevent such violations occurring again. (A/52/40)
- In **A.T. v. Hungary (2/2003)**, adopted on 26 January 2005, on the issue of domestic violence, the CEDAW found that the State party had failed to meet its obligations under the Convention to protect the author against domestic violence on the basis that Hungary's legal and institutional arrangements fell short of international standards, and available domestic remedies were ineffective to protect her against her violent former partner. It also condemned the low priority afforded by national courts to domestic violence matters and the Hungary's failure to eliminate the causes of widespread violence against women in the country. On this basis, it found violations of article 2(a), (b) and (e) and article 5(a) in conjunction with article 16. The State party subsequently adopted numerous pieces of legislation inter alia allowing for barring, restraining and protection orders and different general measures including crisis service centres, shelters, and help lines for children. (A/67/38)
- In **Sohn v. Korea (518/92)**, adopted on 19 July 1995, the HRCttee found a violation of article 19, paragraph 2 having been convicted for exercising his freedom of expression supporting a strike. In 1993, prior to the Committee's decision, the author had been pardoned and no record of his conviction exists. The New Trade Union and Labour relations Adjustment Act came into force in 1997 and no longer prohibits third party interference in labour disputes. According to the State party, this legislative change had been effected in response to the Committee's Decision. (A/52/40)

- In [Kaldarov v. Kyrgyzstan \(1338/2005\)](#), adopted on 18 March 2010, the HRCttee was not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. The State party amended its Code of Criminal Procedure in 2007 to include article 110 (placement in custody now requires a court decision) thereby in part complying with the remedy requested by the Committee to initiate legislative change. (A/68/40)
- In [Ignatane v. Latvia \(884/1999\)](#), adopted on 25 July 2001, the HRCttee found a violation of article 25 with respect to the arbitrary denial of an election candidate's eligibility on the basis of language. The State party informed the Committee that a special working group had submitted to the Cabinet of Ministers proposals on measures to be taken to give effect to the Committee's Decision. On 6 November 2001, the Cabinet accepted two legislative amendments to the "Statutes of the state Language Centre" and "Regulations on the Proficiency Degree in the state Language Required for the Performance of the Professional and Positional Duties on the Procedure of Language Proficiency Tests", thus removing the problematic issues identified by the Committee. The Committee regarded this a satisfactory remedy. (A/60/40)
- In [Gelzauskas v. Lithuania \(836/1998\)](#), adopted on 17 March 2003, the HRCttee found a violation of article 14, paragraph 5, as the submission of a "supervisory protest" which constitutes an extraordinary remedy is not consistent with the requirement of a remedy under article 14, paragraph 5. On 25 July 2003, the State party informed the Committee that the author was released (three years, two months and 10 days) prior to the completion of his sentence pursuant to the decision of the District Court of Kaisiadorys District. Also, since the reform of the court system and the adoption of the new Code of Criminal Procedure which came into force on 1 May 2003, the State party guarantees to every person under its jurisdiction the requirement provided in article 14, paragraph 5, of the Covenant, that everyone convicted of a crime shall have the right "to his conviction and sentence being reviewed by a higher tribunal according to law".<sup>191</sup> (A/59/40)
- In [Aumeeruddy-Cziffra et al. v. Mauritius \(35/1978\)](#), adopted on 9 April 1981, the HRCttee found a violation of 23, paragraph 1 and 17, paragraph 1, in conjunction with articles 2 (1), 3 and 26 (discrimination on grounds of sex), as the State party's immigration law and deportation law subjected foreign husbands of native women to certain restrictions, whereas foreign wives of native men were not so subjected. Subsequently, the two impugned Acts were amended by the Immigration (Amendment) Act of 1983 (Act. No. 5 of 1983) and the Deportation (Amendment) Act of 1983 (Act. No. 6 of 1983) which were passed by Parliament on Women's Day, 8 March 1983, so as to remove the discriminatory effects of those laws on grounds of sex. (Committee's Selected decisions, volume 2, annex 1)
- In [Leirvag v. Norway \(1155/2003\)](#), adopted on 3 November 2004, the HRCttee found that the mandatory teaching of "Christian Knowledge and Religious and Ethical Education (CKREE), which provided a possibility of exemption only limited segments of the teaching violations article 18, paragraph 4. The Education Act was amended to include exemptions rules and came into force on 17 June 2005<sup>192</sup>. (CCPR/C/NOR/CO/5 and A/61/40)
- In [Rameka v. New Zealand \(1090/2002\)](#), adopted on 6 November 2003, the HRCttee found the system of "preventive detention", by which convicted offenders who are considered to pose a serious risk to the safety of the community can be given an indeterminate sentence of imprisonment, violated article 9, paragraph 4. The State party provided a remedy through the mechanism of section 25(3) of the Parole Act 2002 (NZ), which empowers the Minister of Justice to designate a class of offenders who have not yet reached their parole eligibility dates for early

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<sup>191</sup> While the author was released prior to the adoption of the Committee's decision, legislation was adopted thereafter.

<sup>192</sup> It is likely that implementation of this case was also encouraged by the ECtHR findings in a similar case (*Folgerø and others v. Norway*) that Norway's Christian education program was incompatible with the European Convention on Human Rights.

consideration by the Parole Board. Also the Sentencing Act 2002 (NZ) was enacted in which the minimum non-parole period has been reduced from ten to five years. (CCPR/C/80/FU/1)

- In [E. B. v. New Zealand \(1368/2005\)](#), adopted on 16 March 2007, the HRCttee found a violation of article 14, paragraph 1 for undue delay in the resolution of a father's application to the Family Court for access to his children. The matter was heard over a five-day hearing from 20-24 August 2007. In addition, the Government introduced reforms to enable a modern and accessible family justice system including through the introduction of an out-of-court Family Settlement Dispute Service. The majority of the reforms came into force in March 2014. (A/63/40, CCPR/C/NZL/6, CCPR/C/SR.3244)
- In [Broeks v. Netherlands \(172/1984\)](#), adopted on 9 April 1987, the HRCttee found a violation of article 26 as the female authors were treated less favourably under the unemployment insurance system than if they had been men. The legislation in question was amended with retroactive effect - Unemployment Benefits Act amended in 6 June 1991. (A/42/40 and A/59/40)
- In the [Jewish Community of Oslo v. Norway \(30/2003\)](#), adopted 15 August 2005, the CERD found violations of articles 4 and 6 for the failure to protect against dissemination of ideas, "hate speech" and incitement to violence through pro-nazi propaganda and speeches. The speaker's, Mr. Sjolie's, conviction had been overturned by the Supreme Court. According to the state, article 100 of the Constitution on freedom of expression was amended by the Storting on 30 September 2004 and entered into force immediately. The new provision allows for punishment of racist utterances to a greater extent than at the time of Mr. Sjolie's speech. Also, section 135 (a) of the Norwegian Penal Code, which criminalizes racist utterances, has been amended twice since this case. Both amendments have broadened the purview of section 135 (a), thus providing stronger protection against racist utterances. Also, a new Act, No. 33 of 3 June 2005, on prohibition of discrimination on the basis of ethnicity, national origin, ancestry, skin colour, language, and religious and ethical orientation (the Discrimination Act), which provides protection additional to section 135 (a) against discrimination on the basis of racism, was enacted. Also the Equality and Anti-discriminatory Ombudsman was established on 1 January 2006, which will contribute to the enforcement of laws protecting against racism. His/her mandate is to promote equality and combat discrimination on the basis of, inter alia, ethnic origin. (A/61/18)
- In [Guengueng et al. Senegal \(181/2001\)](#), adopted on 17 May 2006, the CAT found violations of articles 5, paragraph 2, and 7, as Senegal had failed to try or extradite Hissene Habré (former ruler of Chad) to Belgium, which had requested his extradition and was prepared to try him. The CAT undertook a mission to Senegal between 4 and 7 August 2009. Senegal (after a long battle) finally agreed to try him and on 20 July 2015, the trial began of Habré on charges of crimes against humanity, war crimes and torture. The trial is the first in the world in which the courts of one country prosecute the former ruler of another for alleged human rights crimes. Necessary amendments were made to the law and Constitution of Senegal to ensure he could be tried. (A/65/44 and subsequent reports)
- In [Anna Koptova v. Slovakia \(13/1998\)](#), adopted on 8 August 2000, the HRCttee found a violation of article 5 (d) (1) with respect to resolutions which expressly forbade the Romany families from settling in the village and threatened them with expulsion should they try to settle there, thus violating the equal right of the Roma to movement and residence. The resolutions had been rescinded prior to consideration of the case. The State party enacted an Anti-Discrimination Act and since 2000 the State party has continued to issue National Action Plans for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance, both of which were considered positive by the Committee during examination of its fourth and fifth periodic reports in August 2004. (A/61/18)
- In [Sahide Goekce \(deceased\) v. \(5/2005\)](#), and [Fatma Yildirim \(deceased\), 6/2005](#), both adopted on 6 August 2007, the CEDAW concluded that the State party had breached its due diligence obligation to protect both deceased women, victims of long-standing domestic violence, primarily by prioritizing the perpetrators' rights to liberty over the physical safety of their partners as a result of which it found breaches

of their right to life and physical and mental integrity: article 2 (a) and (c) through (f), and article 3 of the Convention, read in conjunction with article 1. The State party made amendments to the Code of Criminal Procedure and adopted a Second Act for the Protection against Violence, as well as other general measures including specially trained public prosecutors, increase in resources to intervention centres, training so the police, conferences etc. (See A/64/38)

- In [V.D.A/L.M.R v. Argentina \(1608/2007\)](#), adopted on 29 March 2011, the HRCtee found that court hearings caused LMR's abortion to be delayed to the point that she required an illegal abortion. This violated article 2 in relation to articles 3 (right to equality and non-discrimination), article 7 (right to be free from torture or cruel inhuman or degrading treatment) and article 17 (right to privacy). LMR's right to privacy was violated by the courts' unlawful interference into a decision that should have included only LMR, her guardian, VDA and her doctor. Failing to protect LMR's right to an abortion under Argentinean law, and the resulting suffering violated her article 7 rights. Article 7 protects individuals from mental as well as physical suffering. The violation was particularly serious given her status as a person with a disability. According to the State party, various avenues of redress were being followed, such as the setting of an amount of compensation in the Province of Buenos Aires. The enactment in 2009 of Act No. 26485 on comprehensive protection for the prevention, punishment and eradication of violence against women was the first reparative measure. Also, in the *F.A.L.* case on non-punishable abortions in cases of rape, the Supreme Court issued a ruling, basing its arguments on the Committee's Decision in the *L.M.R.* case. The decision was published in national and provincial media and an act of reparation took place in the city of La Plata where the provincial and national authorities made a public apology to L.M.R. and her mother. The Province of Buenos Aires undertook to: (a) take the necessary steps to ensure that L.M.R. receives a disability pension; (b) replace the periodic study grants that L.M.R. received for her integration into the labour market in accordance with the rules and expectations set out in provincial Act No. 10592; (c) meet with officials of the Directorate of Land, Planning and Housing for the acquisition of a home for L.M.R. and her mother. (CCPR/C/ARG/5, July 2016)

#### [Compensation \(58 cases\)](#)

- In [Ramona Rosa González v. Argentina \(1458/2006\)](#), adopted on 17 March 2011, the HRCtee found a violation by the State party of article 6, paragraph 1, in respect of the deceased, Mr. Roberto Castañeda González, and of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, paragraph 1, in respect of the author and her son. The Committee took into account the fact that the State party had not refuted its responsibility for the incident. Official Gazette of the Province of Mendoza No. 29190, dated 26 July 2012, explicitly acknowledges that the opinion is the first international condemnation of the Province of Mendoza under the universal system for the protection of human rights conceived within the United Nations and that it tarnishes the image and undermines the credibility of the Province at international level. The Gazette also notifies the approval of the *friendly settlement* reached, by which the Government of the Province of Mendoza accepted the petitioners' proposal for compensation, and authorized the payment of the agreed sums to compensate Ramona Rosa Gonzalez de Castañeda, for the material and moral damages suffered i.e 210.00,00 pesos (around 13,000 dollars) for the deceased mother and 65.000,00 pesos (around 4,000 dollars) in legal fees. More information is available on the official website of the Government of the Province of Mendoza ([www.gobernac.mendoza.gov.ar/boletin/pdf/20120726-29190-normas.pdf](http://www.gobernac.mendoza.gov.ar/boletin/pdf/20120726-29190-normas.pdf)). (CCPR/C/ARG/5)
- [L.N.P. v. Argentina \(1610/2007\)](#), adopted on 18 July 2011, concerned an indigenous minor girl who was a victim of rape and discrimination based on gender and ethnicity. The HRCtee found violations of articles 3 (equality), 7 (torture or inhuman or degrading treatment), 14, paragraph 1(fair trial), 17(right privacy), 24(protection children), and 26(discrimination) and article 2, paragraph 3(right to a remedy) due to the way in which she was treated by the

authorities. At its 109<sup>th</sup> session, the Committee considered satisfactory the implementation of a *friendly settlement*, under which the victim was paid compensation of 53,000 USD, a monthly life pension, together with a property from the provincial authorities of Chaco, as well as a scholarship. The State party also initiated a compulsory training on gender discrimination and violence against women for all judicial officials of the Province. (A/69/40)

- In [Perterer v. Austria \(1015/2001\)](#), adopted on 20 July 2004, the HRCtee found a violation of article 14, paragraph 1 on the basis of impartial disciplinary tribunal proceedings. While the author was unhappy with the quantum of compensation offered the Committee considered the State party's offer satisfactory. The state indicated that the offer of 700 euros per year of court proceedings undergone plus an award of court costs of 3,500 euros was in line with the case law on compensation of the ECHR and was mediated by the Ombudsman Board, which is an independent body responsible to Parliament only. In the Ombudsman's report, it highlighted its view that while the Committee's decision is not legally binding it would be unconscionable not to implement them. Thus, it considered the decision on the same level as decisions of the ECHR. (A/61/40)
- In [Pimentel v Brazil \(17/2008\)](#), adopted on 25 July 2011<sup>193</sup>, where the daughter of the author died after having lost her baby during pregnancy, due to inadequate emergency obstetric care in her place of residence in Brazil. The CEDAW established the state's failure to ensure: its due diligence obligation to ensure appropriate services in connection with pregnancy; its duty to regulate and monitor private health care institutions; to address the multiple forms of discrimination against a woman of African descent and poor socio economic background; effective judicial protection for the family. It found violations of article 12 (access to health), article 2 (c) (access to justice), article 2 (e) (states parties' due diligence obligation to regulate the activities of private health service providers), in conjunction with article 1 (discrimination against women). As a result, compensation equal to 40,000 US dollars was paid to the mother; additional compensation is to be paid to the deceased victim's daughter. A square was named after the deceased, and a number of measures have been taken, including introduction of new policies, training activities, changes of hospitals' protocols, provision of medical care was secured in more areas. Activities continue to be carried out by the State party's authorities. (Information with Secretariat)
- In [Keremedchiev v. Bulgaria \(257/2004\)](#), adopted 11 November 2008, the CAT found violations of articles 12 and 16 (1). On 13 November 2014, the Council of Ministers of Bulgaria agreed to pay the complainant 5,000 Bulgarian leva which was regarded as partially satisfactory by the CAT (Follow-up report of April/May 2015 - CAT/C/56/2)
- In [Jallow. v. Bulgaria \(32/2011\)](#) adopted on 23 July 2012, the CEDAW found violations of articles 2(b)-2(f), 5(a), 16(1)(c), 16(1)(d) and 16(1)(f), read in conjunction with Articles 1 and 3, when it failed to investigate allegations that A.P. had committed domestic violence against Jallow and her daughter. These actions, together with the State's failure to inform Jallow properly about her daughter's whereabouts and her condition, violated Articles 2(b) and 2(c). The Committee determined that Bulgaria had also failed to protect Jallow's rights to equality within marriage and as a parent, and to treat her daughter's interests as paramount, in violation of Articles 5(a), 16(1)(c), 16(1)(d) and 16(1)(f). The CEDAW decided to put the follow-up dialogue to a close with a finding of satisfactory resolution of the recommendations contained in its views in light of the compensation paid to the author (7000 BGN, equivalent to 3500 Euros). It also indicated that all information regarding the recommendations of a general nature made in this case will be taken into account in the framework of the Committee's reporting procedure. (Informal

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<sup>193</sup> During a follow-up dialogue between the Follow-up Rapporteurs and a Peruvian delegation, this Brazilian reply was also brought to the attention of the State party's representatives as exemplifying good practice.

document of October/November 2015, CEDAW/C/WGCOP/62/L.1, with the Secretariat)

- In [V.K. v. Bulgaria \(20/2008\) adopted on 15 October 2008](#), the CEDAW found that the State had failed to provide the author with effective protection against domestic violence under articles 2(c)-(g) of the Convention, in particular citing the court's failure to issue a permanent protection order against her husband and to provide sufficient shelters to protect her and her children. The Committee decided to bring the follow-up dialogue to a close with findings of a satisfactory resolution of the recommendations contained in its views in light of the compensation paid to the author (5000 BGN, equivalent to 2500 Euros). It also indicated that information regarding the recommendations of a general nature made in this case will be taken into account in the framework of the Committee's reporting procedure. (Informal document of February/March 2016, CEDAW/C/2016//CRP, CEDAW/C/WGCOP/63/L.1, with the Secretariat)
- In [V.P.P. v. Bulgaria \(31/2011\) adopted on 12 October 2012](#), with respect to sexual violence against a minor, the CEDAW found that the State had failed; to act with due diligence to protect her from sexual assault; to provide an effective remedy and address her health, rehabilitative and other needs; and to provide her with ongoing protection and provide her with effective compensation, as a result of which it had violated the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author's daughter under articles 2, paragraphs (a), (b), (c), (e), (f) and (g); read together with articles 1, 3 and 5, paragraphs (a) and (b); article 12 and article 15, paragraph (1). The Committee decided to bring the follow-up dialogue to a close with findings of a satisfactory resolution of the recommendations contained in its views in light of the compensation paid to the author (10000 BGN, equivalent to 5000 Euros, respectively). It also indicated that information regarding the recommendations of a general nature made in this case will be taken into account in the framework of the Committee's reporting procedure. (Informal document of February/March 2016, CEDAW/C/2016//CRP, CEDAW/C/WGCOP/63/L.1, with the Secretariat)
- In [Sankara et al. v Burkina Faso \(1159/2003\), adopted 28 March 2006](#), the HRCtee found violations of article 7 on the basis of the suffering of the Sankara family following the killing of Mr. Sankara in disputed circumstances and article 14, para 1 as the Courts failed to respect the guarantee of equality resulting from the families request for a public inquiry into Mr. Sankara's death. In follow-up to this case, the State party officially acknowledged Mr. Sankara's grave; erected a monument in his honour; ordered a death certificate; liquidated his military pension for the benefit of his family; and made available 434 450 000 CFA (around 843,326.95 USD) was for Ms. Sankara and her children (they refused to accept it). (A/62/40) In July 2016, during a dialogue on the States initial report, the Committee welcomed news from the State that this case had been reopened, that over 10 people had been indicated for Mr. Sankara's murder and the case was likely to be finalised by the end of 2016. The State also indicated that he had been named a national hero. (CCPR/C/SR.3279 and CCPR/C/BFA/CO/1)
- In [Dumont v. Canada \(1467/2006\), adopted on 16 March 2010](#), involving the author's claim for compensation for wrongful conviction and sentence for rape, during which he spent a total of 34 months in jail before acquittal, the HRCtee found violations of article 2, paragraph 3 (effective remedy), read in conjunction with article 14, paragraph 6 (compensation wrongful conviction), of the Covenant. The Committee closed the follow-up consideration of with a note of a satisfactory implementation of the Committee's recommendation, in light of compensation received by the author. A "substantial amount" (not revealed by author) was received from the City of Boisbriand's insurers in Quebec. (A/69/40)
- In [Suarez de Guerrero v. Colombia \(45/1979\), adopted on 31 March 1982](#), the HRCtee found a violation of article 6 (1) for the arbitrary deprivation of life during a police raid; and [Herrera Rubio v. Colombia \(161/1983\), adopted 2 November 1987](#), where the Committee found violations of article 6 (right to life), due to the disappearance, subsequent killings and failure to investigate their murders and article 7 and article 10, paragraph 1, for torture and ill-

treatment during detention the state provided compensation. In [Delgado Paez v. Colombia \(195/1985\)](#), adopted on 12 July 1990, with findings of violations of articles 9, paragraph 1, and 25, paragraph (c), due to harassment and threats in respect of which the State party failed to provide protection and which made the author's continuation in public service teaching impossible, compensation of 71,817.40 (around \$37,000) was made following resolution 10461 of December 2009 (annex 1 of CCPR/C/COL/6) ; and [Bautista v. Colombia \(563/1993\)](#) Decision adopted on 27 October 1995, with findings of articles 6, paragraph 1, for disappearance and arbitrary deprivation of life, article 7 for torture, and 9, paragraph 1, for illegal arrest. In 25 October 2002, the State party indicated that a payment of damages of 36.935.300 Colombian pesos was paid to the victim. (A/58/40 and CCPR/C/COL/Q/7/Add.1)

- In [Rojas García v. Colombia \(687/1996\)](#), adopted on 3 April 2001, the HRCttee found a violation of article 17, paragraph 1 due to the arbitrariness of a raid on a house and article 7 (torture or inhuman treatment) due to the treatment at the hands of the police. [Coronel et al., \(778/1997\)](#), adopted on 24 October 2002, the HRCttee found violations of article 6, paragraph 1 due to disappearance and arbitrary deprivation of life, article 7 for treatment received at the hands of the police, article 9 for illegal arrest and article 17 for illegal arrests. In [Jiménez Vaca v. Colombia \(859/1991\)](#), adopted on 25 March 2002, the HRCttee found violations of articles of article 6, paragraph 1 (right to life), article 9, paragraph 1 (security of person), and article 12, paragraphs 1 and 4 for the author's involuntary exile.<sup>194</sup> (A/68/40 and CCPR/C/COL/Q/7/Add.1)
- The HRCttee found violations in a number of cases against the Czech Republic concerning discrimination in the granting of restitution or compensation for properties confiscated during the Communist regime. [Simunek v. Czech Republic \(516/1992\)](#), adopted on 19 July 1995; [Pezoldova v. Czech Republic \(757/1997\)](#), adopted on 25 October 2002 related to the denial of access to documents to prove restitution claim: 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. [Brok v. Czech Republic \(774/1997\)](#), adopted on 31 October 2001: Compensation of 2,236,870 CZK (around 79,000 euros) was made to the family through a Government programme implemented for Holocaust victims. The author's family has accepted the compensation offered; [Fabryova v. Czech Republic \(765/1997\)](#), adopted on 30 October 2001; Compensation of 1,542,839 CZK (around 54,500 euros) was offered to the family through a Government programme implemented for Holocaust victims. The family of Ms. Fabryova was not satisfied with the compensation offered. A new claim for restitution was filed and an appeal of a negative decision remains pending. (A/59/40, A/61/40, A/62/40)
- [Ziad Ben Ahmed Habassi v. Denmark \(10/1997\)](#), adopted on 17 March 1999, the CERD found a violation of article 6 in conjunction with article 2 (d) on the basis of a finding of discrimination on the basis of nationality with respect to a loan request. The CERD considered as satisfactory information (provided on 11 July 2006) that the Ministry of Justice paid DKK 20,000 (around 2,700 euros) plus VAT to Mr. Habassi's attorney, which corresponds to the amount requested by the attorney to cover his judicial assistance in connection with the complaint. Other general measures including notification to all relevant bodies including financial institutions that they could not refuse loan applications on nationality alone. (A/61/18)
- In [Kashif Ahmad v. Denmark \(16/1999\)](#), adopted on 13 March 2000, the CERD found a violation of article 6 for failure to examine claims of racial discrimination. The Committee considered as satisfactory information that the Ministry of Justice had paid the petitioner's counsel's fee in the matter totalling DKK 22,000 plus VAT. (A/61/18)
- In [Mohammed Hassan Gelle v. Denmark \(34/2004\)](#), adopted on 6 March 2006, the CERD found violations of articles 2, paragraph 1 (d), 4, and 6 with respect

<sup>194</sup> It is not clear whether compensation was actually awarded in these three cases but resolutions for compensation were made by the Committee of Ministers.



to racial discriminatory statements made by a member of Parliament against individuals of Somali origin. Compensation of DKK 40,000 (US\$ 6,670) was granted to cover the costs of legal assistance during the complaints procedure, which was provided by way of legal aid, was considered adequate by the Committee. (A/62/18)

- In [Saada Mohamed Adan v. Denmark \(43/2008\)](#), adopted on 13 August 2010, the CERD found a violation of article 2, paragraph 1 (d), and article 4 of the Convention, due to the lack of effective inquiry to determine whether the petitioner has suffered discrimination on the base of race and the failure to effectively investigate the petitioner's complaint under article 266 (b) of the Criminal Code which constitutes a separate violation under article 6 of the Convention. Compensation of DKr 45,000 (US\$8,300) was granted to cover the costs of legal assistance during the complaints procedure, which was provided by way of legal aid<sup>195</sup>. (A/68/18 and A/69/18)
- In [Villacres Ortega v. Ecuador \(481/1991\)](#), adopted on 8 April 1997, the HRCttee found violations of articles 7 and 10, paragraph 1 at the hands of the authorities while in prison. In 1999, the State party indicated that they had agreed on a *friendly settlement* in which the state recognized its international responsibility for having violated articles 7 and 10, paragraph 1, and agreed to pay him US\$ 25,000 for damages and to take civil, penal and administrative action against the perpetrators of the violations to bring them to justice and reserved its right to claim back from the perpetrators the amount of damages paid. A similar agreement was also made in [Garcia Fuenzalida \(480/1991\)](#), adopted on 12 July 1996. (A/54/40)
- In [Vuolanne v. Finland \(265/1987\)](#), adopted on 31 October 1987, the HRCttee found a violation of article 9, paragraph 4, as the author who had been deprived of his liberty by way of military disciplinary sanction by an administrative authority, without a right to recourse to a court of law. The Committee considered as positive information that on 16 April 1996, the Supreme Administrative Court of Finland had confirmed a previous decision by the Administrative Court of Uusimaa pursuant to which the State party was to pay Mr. Vuolanne 8,000 Finnish marks plus 4,000 to compensate for legal costs. (A/51/40)
- [Äärelä et al. V. Finland \(779/1997\)](#), adopted on 24 October 2001, the HRCttee considered that the imposition by the Court of Appeal of substantial costs against the authors, without the discretion to consider its implications for the particular authors (indigenous), or its effect on access to court of other similarly situated claimants, constituted a violation of the authors' rights under article 14, paragraph 1, in conjunction with article 2. It also found another violation of the same article, as the authors were precluded from responding to a brief submitted by the other party that the Court took account of in reaching its decision. In the decision itself the Committee noted that, in the light of the relevant amendments to the law governing judicial procedure in 1999, the State party's courts now possess the discretion to consider these elements on a case-by-case basis. By submission of 24 January 2002, the State party informed the Committee that the authors had been granted the costs awarded against them part of which may be considered compensation for non-pecuniary damage concerning non-compliance of the Forestry Service. (CCPR/C/80/FU/1)
- In [Abichou v. Germany \(430/2010\)](#), adopted on 21 May 2013, the CAT found a violation of article 3 (return to Tunisia), the State party offered compensation of 3,000 euros and indicated that if he was dissatisfied with the amount he has the opportunity to use the remedies available to him under the German law with regard to compensation. (CAT/C/53/2)
- In [A.S v. Hungary \(4/2004\)](#), adopted on 14 August 2006, the CEDAW found violations of the author's rights, who was a member of the Roma community, when a doctor in a public hospital performed a forced sterilization procedure without providing adequate information regarding the procedure to obtain her free and

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<sup>195</sup> This was not considered "adequate compensation for the moral injury" which was recommended by the Committee in its decision.

informed consent. It found violations of her rights to (1) fully informed consent to medical procedures; (2) right to information on family planning; (3) right to appropriate services in connection with pregnancy and the post-natal period; and (4) right to determine the number and spacing of her children, under Articles 10(h), 12 and 16(1)(e). On 20 July 2009, the State party informed the Committee that it had paid the sum of 5.4 million Hungarian forints (approximately \$28,000) to the author by way of compensation. The author herself had made a claim for compensation of 12,000 Euros (approx. 14,900 USD) in the domestic proceedings. It also made the required legislative amendments, provided psychological support to the author and took other general measures to ensure non-repetition. (A/64/38)

- [Nyuasti and Takács v. Hungary \(1/2010\), adopted 16 April 2013](#), the CRPD found a violation of article 9, paragraph 2 (b) due to the lack of accessibility for persons with visual impairments to the network of ATMs operated by OTP. The State party undertook a number of measures including a commitment to retrofit each ATM in the local branches of OTP (approximately 400 ATMs nationwide) so that they can be used by persons with visual impairments independently. It also paid compensation to the authors and reimbursed them for their legal expenses which the Committee welcomed and graded this element of the remedy as an “A”. (CRPD/C716/3)
- In [Bujdosó et al. v. Hungary \(4/2011\), adopted on 9 September 2013](#), the CRPD found a violation of article 29 of the Convention, read alone and in conjunction with article 12 of the Convention, as the authors were excluded from the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, which constituted discrimination on the basis of disability. The State party, inter alia, awarded the authors compensation and reimbursed their legal costs on 17 June 2015, which the Committee welcomed and graded this element of the remedy as an “A”. (CRPD/C716/3)
- In [Mellet v. Ireland \(2324/2013\), adopted on 31 March 2016](#), in a case where the author was pregnant with a foetus with fatal abnormalities and had to go to the UK to terminate her pregnancy, the HRCttee found that by prohibiting and criminalizing abortion, and thereby preventing the author from accessing abortion services in Ireland, the state subjected her to severe emotional and mental pain and suffering. As a result, Ireland violated her rights to freedom from cruel, inhuman or degrading treatment, privacy, and equality before the law, under articles 7, 17 and 26 of the ICCPR. In November 2016, the State party offered the author a payment of 30,000 euros “on an ex gratia basis” and directed the Health Service Executive to ensure that she will have timely access to all appropriate psychological services provided by the Health Service Executive. The author accepted this payment. (Follow-up report of 119<sup>th</sup> session)
- [Gerasimov v. Kazakhstan \(433/2010\), adopted on 24 May 2012](#), the CAT concluded that the facts before it disclosed violations of article 1 (torture), in conjunction with article 2, paragraph 1 (measures to prevent acts of torture), and articles 12 (prompt and impartial investigation), 13 (right to complain to, and to have his case promptly and impartially examined), 14 (right to compensation) and 22 (interference with the right of petition) of the Convention. On 28 August 2014, the complainant submitted that the court’s decision to award him compensation (around 5,440 euros) for illegal detention was an important step towards the implementation of the Committee’s decision. (CAT/C/53/2)
- In [Filipovich v. Lithuania \(875/1999\), adopted on 4 August 2003](#), the HRCttee found violations of articles 14, paragraph 3(c), for four years and four months time lapse between the start of the investigation and the conviction in first instance without any explanation of the reason why from the state. On 19 November 2003, the State party informed the Committee that, on 15 December 1998, the author had been released on parole (10 months and 19 days) prior to serving his sentence and prior to the Committee’s decision. Taking into account the Committee’s Decision, the Government of the Republic of Lithuania by a separate Resolution No 1691 of 24 December 2003 approved compensation of LTL 5,000 (1,450 euros). The decision was taken on the Government level, as the Law of the Republic of Lithuania on Reimbursement of Damage Caused by Illegal Actions by Public Authorities was supplemented by the provision on the reimbursement of damage pursuant to the

decisions of the Committee only on 30 March 2004. By this decision, the Government authorized the Ministry of Justice to pay this compensation to the complainant from the share of budgetary appropriations to reimburse the damage caused by unlawful actions of bodies of inquiry and investigation, prosecutors and court (judge), in accordance with Reimbursement Law. The Government's representative to the ECtHRs was assigned the duty to make an appropriate notification to the Committee. The new Code of Criminal Procedure which came into force on 1 May 2003 provides for effective domestic remedies in future cases of unreasonably prolonged pre-trial investigations. (A/59/40)

- [Jansen-Gielen v. the Netherlands \(846/1999\)](#), adopted on 3 April 2001, the HRCttee found of that absence of the guarantee of equality of arms between the parties in the production of evidence for the purposes of the hearing a violated article 14, paragraph 1. On 10 September 2001, the State party informed the Committee that it had paid the author ex gratia 5,000 guilders, including any costs of psychiatric reports provided in the national proceedings, and a further 3,500 guilders by way of reimbursement for legal assistance. As to the systemic issue, the entry into force of the General Administrative Law Act on 1 January 1994 prevents recurrence of future similar violations. (A/59/40)
- [Coeriel v. the Netherlands 453/1991](#), adopted on 31 October 1994, the HRCttee found that the refusal of the authors' request to have their surnames changed was unreasonable and therefore arbitrary within the meaning of article 17, paragraph 1. The authors were also granted compensation. On 28 March 1995, the State party submitted that although its legislation and policy in the field of the changing of names offer sufficient guarantees to prevent future violations of article 17 of the Covenant, "out of respect for the Committee's Decision", the Government decided to ask the authors whether they still wish to change their names in line with their applications and if so permission would be granted for such a change to be effected without costs. (A/51/40, A/56/40)
- [In Vos v. the Netherlands \(786/1997\)](#), adopted on 29 July 1999, the HRCttee found that the fact that a pension paid to a married male former civil servant whose pension accrued before 1985 is lower than the pension paid to a married female former civil servant whose pension accrued at the same date amounted to a violation of article 26. On 9 November 2000, the State party informed the Committee that it was granting compensation to the author for his costs and expenses incurred in the proceedings before the Committee. (A/56/40)
- [Van Alpen v. the Netherlands \(305/1988\)](#), adopted on 23 July 1990, the HRCttee found a violation of article 9, paragraph 1 for arbitrary deprivation of liberty. The State party indicated that "out of respect for the Committee" give ex gratia payment of 5,000 Ditsj Guilders. (A/46/40)
- [Spakmo v. Norway \(631/1995\)](#), adopted on 5 November 1999, the HRCttee found a violation of article 9, paragraph 1 with respect to an arbitrary detention. On 3 April 2000, the State party informed the Committee that it had decided to pay the author compensation of NKr 2,000 for non-pecuniary damages, as well as NKr 70,000 compensation for legal costs. (A/55/40)
- In [Aboushanif v. Norway \(1542/2007\)](#), adopted on 17 July 2008, the HRCttee found that the author was denied the right to have his criminal conviction and sentence in relation to tax offences reviewed by a higher tribunal (article 14(5) ICCPR). The Committee regarded as satisfactory an award of NOK 200,000 from the State party as compensation. (A/69/40)
- [K.L. v. Peru \(1153/2003\)](#), adopted on 24 October 2005,<sup>196</sup> the HRCttee found violations of articles 7(cruel, inhuman treatment), 17 (arbitrary interference in private life) and 24 (special protection of minor) with respect to the denial by the State party the opportunity to terminate a pregnancy of an anencephalic

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<sup>196</sup> In *L.C v. Peru (22/2009)*, adopted on 17 October 2011, the CEDAW found violations of the Convention against Peru, for having denied a 13 year old girl emergency surgery as well as an abortion. We have been told informally that compensation was provided in this case but have not yet received official confirmation from either the State or the author.

**foetus. In 2014, the government adopted national guidelines for providing safe abortion services that provide clarity for physicians and patients on legal abortion in the country. On 11 March 2016 Counsel for the author indicated that the State had fully complied with the Committee's Views. He also indicated that on 18 November 2015, the Peruvian Government signed a final agreement for the implementation and payment of compensation of 166,000 Peruvian soles (around 45,620 euros). (CCPR/C/118/3)**

- In [Fijalkowska v. Poland \(1061/2002\)](#), adopted on 26 July 2005, the HRCttee found a violation of article 9, paragraph 1, as the author was neither assisted nor represented at a hearing for her committal to psychiatric detention and article 9, paragraph 4, as her right to challenge her detention was rendered ineffective by the State party's failure to serve the committal order on her prior to the deadline to lodge an appeal. The Committee considered as satisfactory the receipt of a copy of a letter from the author, dated 22 August 2006, in which she accepts the sum of 20,000 PLN (\$6,696) as a remedy in this case provided by the Ministry for Foreign Affairs. (A/62/40)
- In [Koné v. Senegal \(386/1989\)](#), adopted on 21 October 1994, the HRCttee considered that four years and four months in custody prior to trial without special circumstances violated article 9, paragraph 3. The Committee regarded as positive the State party's reply of 15 July 1996 that the President of Senegal gave instructions to the State party's Minister for Justice to make an ex gratia payment to Mr. Koné (CFAF 300,000), as compensation for the duration of his pre-trial detention. (A/51/40) However, given that the author viewed the amount as insufficient, the state provided him with a plot of land to build a home, compensation of CFAF 500,000 and treatment of his medical problems free by the President's personal physician.<sup>197</sup> (A/61/40, CCPR/C/SR. 1619)
- In [Ristic v. Serbia \(113/1998\)](#), adopted on 11 May 2001, the CAT found violations of articles 12 and 13 for failure by the state to investigate and examine allegations of torture. In December 2004, the First Municipal Court of Belgrade had issued a judgement holding the Republic of Serbia and the State Union of Serbia and Montenegro jointly liable to pay Radivoje and Vesna Ristic 500,000 dinars each for non-pecuniary damages. The Republic of Serbia paid the above amount to Mr. and Ms. Ristic on 7 February 2006 with interest calculated from 30 December 2004. (A/69/44). According to the State, it paid an amount of RSD 1,487,185.00 in March 2006. (CAT/C/SRB/2)
- [Dimitrov v. Serbia \(171/2000\)](#), adopted on 3 May 2005, the CAT found violations of article 2, paragraph 1, in connection with: articles 1, for having been subjected to torture by the State; article 12, due to the States failure to carry out a prompt and impartial investigation; article 13, for its failure to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities and; article 14, due to the absence of criminal proceedings which deprived him of the possibility of filing a civil suit for compensation. On 20 October 2011, an agreement between Mr. Dimitrov and the State party was signed, by which the latter agreed to pay compensation of 450,000 dinars. It was paid in November 2011. The complainant withdrew his claim before the courts. (A/69/44 and CAT/C/SRB/2)
- [Danilo Dimitrijevic v. Serbia \(172/2000\)](#), adopted on 16 November 2005, the CAT found violations of article 2, paragraph 1, in connection with articles 1, 12, 13 and 14 for the same reasons as in Dimitrov above. On 17 October 2007, the Humanitarian Law Centre filed, on behalf of Mr. Dimitrijevic, a compensation claim with the Serbian Public Attorney's Office for the violation of his rights caused by the unlawful actions of state institutions, and enclosed the decision of the Committee against Torture.

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<sup>197</sup> During the dialogue with the State, Elisabeth Evatt, ex-member of the Committee, expressed her satisfaction at the further information supplied by the delegation, in particular the updated information on the Kone case. (CCPR/C/SR.1619)

The Public Attorney's Office offered 250,000 dinars for damages and Mr. Dimitrijevic accepted the offer and was paid in May 2008. (A/69/44 and CAT/C/SRB/2)

- In **Nikolic v. Serbia (174/2000)**, adopted on 24 November 2005, the CAT found violations of articles 12 and 13 because of the State's failure to proceed to an impartial investigation into the cause of death of a detainee held in custody. In November 2008, the State party paid compensation to the parents and the sister of the victim for the emotional anguish suffered owing to the death of their close family member, in the amount of 1,645,145 dinars. This considered as partially satisfactory by the Committee. (A/69/44 and CAT/C/SRB/2)
- In **Dragan Durmic v. Serbia (29/2003)**, adopted on 6 March 2006, in which the CERD found a violation of article 6 (effective remedy) of the ICERD, as the State failed to investigate his "arguable claim" of a violation of article 5 (f) (right of access to public places without racial discrimination), promptly, thoroughly and effectively. The State party subsequently provided compensation of RSD 200,000.00, which was paid in May 2010. (CAT/C/SRB/2)
- **Bodrožić v. Serbia (1180/2003)**, adopted on 31/10/05, the HRCttee found that a politician's conviction for criminal insult on the basis of an article published by him amounted to a breach of article 19, paragraph 2 (freedom of expression). In 25 July 2008, the author informed the Committee through the UNDP that he had signed an agreement with the Ministry of Justice accepting compensation of 800,000 dinars for the violation of his rights under the Covenant. (A/63/40)
- **R.K.B v Turkey (28/2010)**, adopted on 24 February 2012, the CEDAW found that the Labour Court and Court of Cassation by failing to address the gender aspect in a case relating to unlawful termination of a work contract, perpetuated gender stereotypes about the role of women and men (with it being accepted for the latter to have extramarital affairs), violating article 5, paragraph (a), of the Convention. The author's treatment by her former employer, in the context of the unlawful termination of her labour contract by violating her right to work and equal treatment constituted gender-based discrimination under article 11, paragraphs 1 (a) and (d). The CEDAW decided to close the follow-up procedure following a finding of partly satisfactory based on the provision of compensation. (CEDAW/C/WGCOP/61/L.1, and information with Secretariat)
- In **Viana Acosta v. Uruguay (110/1981)**, adopted on 29 March 1984, the HRCttee found violations of articles 7 and 10 on account of inhuman treatment in detention as well as articles 14, paragraph 3 (c) because he was not tried without undue delay and 14, paragraph 3 (b) and (d) because he did not have counsel of his own choosing before the Supreme Military Tribunal. The author was granted compensation of US\$ 120,000. (A/59/40)
- **Hajrizi Dzemajl et al. v. Yugoslavia, (161/2000)**, adopted on 21 November 2002, the CAT found violations of articles 16, paragraph 1 (cruel, inhuman or degrading treatment), 12 (prompt and impartial investigation) and 13 (prompt and impartial examination) with respect to the burning and destruction of houses owned by Roma with the acquiescence of state officials, failure to investigate and failure to provide compensation. Given the payment of compensation in this case, the fact that the case is quite old and the declaration of independence of the State party (the Republic of Montenegro) since the incident in question the Committee decided to close this case. (A/65/44)
- In **Mukunto v. Zambia (768/1997)**, adopted on 2 August 1999, the HRCttee found a violation of article 14, paragraph 1 for denial of access to court to claim compensation for illegal detention. The author was provided with compensation of \$5,000. (A/59/40)
- In **Kalenga v. Zambia (326/1988)**, adopted on 27 July 1993, the HRCttee found violations of articles 9, paragraphs 2 and 3, 10, paragraph 1, 12, paragraph 1, and 19, of the Covenant for failure: to inform him promptly of the reasons for his arrest and the charges against him, and to bring him promptly before a judge; to treat him with humanity and respect; to allow him freedom of movement; and failure to allow him to express his opinions freely. The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to challenge,

contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party. (A/61/40)

- [Bwalya v. Zambia \(314/1988\)](#), adopted on 14 July 1993, the HRCttee found violations of articles 9, paragraphs 1 and 3, 12, 19, paragraph 1, 25(a) and 26 with respect to a author who was chairperson of an opposition political party and subjected to arbitrary arrest, attacks on his freedom of expression and movement. The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed. (A/61/40)
- In [Alex Soteli Chambala v. Zambia \(856/1999\)](#), adopted on 15 July 2003, the HRCttee found violations of article 9, paragraph 1, together with article 2 and article 9, paragraph 5, for arbitrary detention and violation of the right to receive compensation. Compensation was paid to the victim. (CCPR/C/ZMB/CO/3)
- In [Lopez Burgos v. Uruguay \(52/1979\)](#), adopted on 29 July 1981, where the HRCttee found violations of articles, 9, 14, 19 and 22, for arbitrary detention, unreasonable delay for trial, persecution for trade union activities and fair trial violations, the State indicated that from 1 March 1985, the possibility of filing an action for damages was open to all of the victims of human rights violations which occurred during the de facto government. The Government settled Mr. Lopez's case on 21 November 1990, by paying him US\$ 200,000.<sup>198</sup> (A/61/40)

#### [Reinstatement of status quo/Readjustment pensions \(5 cases\)](#)

- In [Mazou v. Cameroon \(630/1995\)](#), adopted on 26 July 2001, the HRCttee found violations of articles 25(c) (access to public service) and 2 (right to a remedy) due to an unfair dismissal from the public service. By note verbale of 5 April 2002, the State party informed the Committee that: the author had been reintegrated into the judicial corps; he received the reminder of his salary from the time of his revocation; in accordance with Cameroun law, he received an automatique step increase (by decret no. 92/110 of 8 May 1002 by the President); was promoted to grade 3 as a judge and that his career is following its normal course. The Committee considered that the State party had complied with its decision. (See Annual Report A/59/40, CCPR/C/80/FU1, also original submission from State party dated 26 April 2002)
- In [Vojnović v. Croatia \(1510/2006\)](#), adopted on 30 March 2009, the Committee found unreasonable delay in proceedings for the determination of the author's specially protected tenancy, arbitrary decision not to hear witnesses, and interference with the home, concluding violations of article 14, paragraph 1, and article 17 both in conjunction with article 2, paragraph 1. The Committee regarded as satisfactory the State party's submission that the competent Ministry had allocated an apartment in Zagreb to the author, which was fully comparable to his pre-war accommodation, thus restoring de facto his pre-war position in respect of his housing situation. (A/66/40)
- In [Mundy Busyo et al. \("68 magistrates"\) v. DRC \(933/2000\)](#), adopted on 31 July 2003, the HRCttee found violations of article 25, paragraph (c) (access to public service), read in conjunction with article 14, paragraph 1 (fair trial/suit at law), on the independence of the judiciary, and of article 2, paragraph 1, of the Covenant, due to the arbitrary dismissal of a number of judges as well as article 9 for arbitrary detention. In its concluding observations, the Committee welcomed the delegation's assertion that the judges can once again practice their profession freely and have been compensated for being arbitrarily suspended. (A/66/40 and CCPR/C/COD/CO/3)
- In [Gueye et al. v. France \(196/1989\)](#), adopted in March 1989, where the HRCttee found a violation of article 26 (discrimination), as retired Senegalese members of the French Army did not receive pensions equal to those given to retired members of the French Army having French nationality. On 30 January 1996, the State party

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<sup>198</sup> It is unclear from the HRCttee's annual reports whether other authors of Committee Views benefited from compensation. According to the State, at the time of its response, 36 suits in damages had been filed, 22 of which are related to arbitrary detention and 12 to the restitution of property.

indicated that the pensions of former Senegalese soldiers of the French Army and those of former soldiers of the French Army who are citizens of other former French colonies had been readjusted on several occasions since the adoption of the decision. (A/51/40)

- In [Samuel Lichtensztejn v. Uruguay, adopted on 30 September 1980](#), where the HRCttee found a violation of article 12 for the States refusal to issue him a passport. After his return to Hungary, he resumed his position as Head of the University of the Republic. By virtue of Law 15.783 of 20 November 1985, the State indicated, that “all the individuals who had previously held a public office were entitled to resume their jobs”.<sup>199</sup>(A/61/40)

#### Other (18 cases)

- In [Monaco de Gallichio v. Argentina \(400/1990\), adopted on 3 April 1995](#), the HRCttee found that the State party had failed to establish expeditiously the identity of a minor finding a violation of article 24, paragraphs 1(Protection of the child) and 2 (right to a name), of the Covenant and recommending the payment of compensation to the author and her granddaughter. The Committee recognized as positive two follow-up submissions in August and September 1995, in which the State party indicated that by judgment of 30 August 1995, a federal judge ordered the police authorities to lift the prohibition to leave the country vis-à-vis the victim’s granddaughter and to expedite the delivery of a federal identity card and a passport. With that decision, the victim’s granddaughter ceased to be under the legal authority of the court and was placed under the author’s guardianship. (A/51/40)
- In [X v. Argentina \(8/2012\), adopted on 11 April 2014](#), the CRPD found violations of article 9, paragraphs 1 (a) and (b), article 14, paragraph 2 (reasonable accommodation), and article 17 of the Convention due to the poor conditions of detention, lack of access to adequate medical care and rehabilitation for the author with disabilities while in detention. The Committee gave the State party an “A” assessment for having taken numerous actions to ensure the complainant’s place of detention met his needs and for having provided him with medical treatment. (CRPD/C/14/3)
- [Cabal and Pasini v. Australia \(1020/2001\), adopted on 7 August 2003](#), where the HRCttee found a violation of article 10, paragraph 1, for the failure to have a cell sufficient adequately to hold two persons is insufficient explanation for requiring two prisoners to alternately stand and sit, even if only for an hour, within such an enclosure. While the State indicated that it would not provide the authors with compensation, it submitted that it is unusual for two persons to share cells and that it had asked the Victorian police to take the necessary steps to ensure that a similar situation does not arise again. (A/62/40)
- In [Halimi-Nedibi Quani v. Austria \(8/1991\), adopted on 18 November 1993](#), the CAT found a violation of article 12 for the failure to investigate allegations of torture. Several decrees were adopted from the Ministry of Justice and Interior relating to the need to report to public prosecutors and follow-up on complaints of torture including allegations against officials. In view of the time lapsed since it adopted its decision and the vagueness of the remedy recommended, the Committee considered the response satisfactory. (A/65/44)
- In [Sayadi and Vinck v. Belgium \(1472/2006\), adopted on 22 October 2008](#), the HRCttee found that as a result of the actions of the State party, there had been an unlawful attack on the authors’ honour and reputation (article 17) due to their presence on the UN sanctions list and that it had not been shown that the restrictions of the authors’ rights to leave the country (article 12) were necessary to protect national security or public order. On 20 July 2009, the Secretariat received information to the effect that the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated

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<sup>199</sup> It is unclear from the annual reports whether other authors of HRCttee Views also resumed their activities under this law.

individuals and entities finally decided to remove Mr. Sayadi and his wife from the sanctions list. (A/64/40)

- In [NG v. Canada \(469/1991\)](#), adopted on 5 November 1993, the HRCtee found that execution by gas asphyxiation, should the death penalty be imposed on the author in the USA, would not meet the test of "least possible physical and mental suffering", and constituted cruel and inhuman treatment, in violation of article 7 of the Covenant. On 3 October in 1994 (unpublished). The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provides that an individual sentenced to capital punishment may choose between gas asphyxiation and lethal injection. In the event of a future request for an extradition with the possibility of the death penalty, the Views of the Committee in this communication will be taken into account. (A/59/40)
- In [Portorreal v. Dominican Republic \(188/1984\)](#), adopted on 2 November 1987, the Committee found violations of articles 7 and 10, paragraph 1, because Ramon Martinez Portorreal, the leader of a human rights association, was subjected to inhuman and degrading treatment and to lack of respect for his inherent human dignity during his detention; article 9, paragraph 1, because he was arbitrarily arrested; and article 9, paragraph 2, because he was not informed of the reasons for his arrest. The State party informed the Committee of measures taken in response, accepted by the author, in particular offering Portorreal and members of the Dominican Human Rights Committee all assurances and guarantees to carry out their functions, including by issuing an official passport for Portorreal. (A/45/40)
- In [Hopu and Bessert v. France \(549/1993\)](#), adopted on 29 July 1997, the Committee found violations of articles 17 (right to privacy) and 23 (protection family) for arbitrary interference relating to the building of a hotel complex on their ancestral burial grounds where they claimed family members were buried. By submission of 29 January 1998, the State provided an archaeological report, which determined the site with precision, and after a scientific study it decided to modify the original building plan to protect the graves beside the sea. A retaining wall was built to preserve them. (A/53/40)
- In [Gröninger v. Germany \(2/2010\)](#), adopted on 4 April 2014, the CRPD found violations of article 27, paragraphs 1 (d), (e) and (h), read together with article 3, paragraphs a, b, c and e, article 4, paragraphs 1(a) and 1 (b) and article 5, paragraph 1 of the Convention, on the basis of the discriminatory effect of an integration subsidy in social legislation on a disabled persons ability to find employment. Mrs. Gröninger argues that an integration subsidy included in Germany's social legislation is discriminatory. This subsidy can only be claimed by employers after they make a job offer, and the process excludes participation of the person. The State party provided information on services that the author could avail of under the Federal Employment Agency. Following the author's move to France, the State provided information on the employment services offered there as part of a cross-border cooperation agreement. The CRPD regarded this part of its recommendation as satisfactory. (CRPD/C/14/3)
- [Haraldsson and Sveinsson v. Iceland \(1306/2004\)](#) adopted on 24 October 2007, concerned the fisheries management system and excluded the authors from the possibility of being allocated fishing quotas. The HRCtee found a violation of article 26 as the property entitlement accorded permanently to the original quota owners to the detriment of the authors was not based on reasonable grounds. The Committee closed consideration of this case with a note of partial satisfaction due to several explanations from the State party that a review (which was the remedy suggested by the Committee) of its fisheries system was being carried out (CCPR/C/ISL/5) and new bills were presented aimed at increasing the possibilities for participation of those not currently stakeholders in the system. (A/67/40)
- In [Osbourne v. Jamaica \(759/1997\)](#), adopted on 13 April 2000, the HRCtee found that the imposition of the sentence of whipping constituted a violation of article 7. In 24 November 2000, the State party informed the Committee that the sentence of whipping had been remitted. (A/40/ 56)



- In [El Ghar v. Lybia \(1107/2002\)](#), adopted on 29 March 2004, the HRCttee found a violation of article 12, paragraph 2, as the author was denied a passport without any valid justification as a result of which she was prevented from travelling abroad to continue her studies. A passport bearing her name was duly issued on 2005, as requested by the Committee. (CCPR/C/112/R.3)
- In [Raihman v. Latvia \(1621/2007\)](#), adopted on 28 October 2010, the Committee found that the State party's unilateral modification of the author's name on official documents is not reasonable, and thus amounted to arbitrary interference with his privacy, in violation of article 17. In its dialogue with the Committee in March 2014, the State party indicated that Mr. Raihman's right to have his name appear in its original form in official documents had been recognized following the Committee's decision. (CCPR/C/SR.3042)
- In [Muller and Engelhard v. Namibia \(919/2000\)](#), adopted on 26 March 2002, the HRCttee found a violation of article 26 with respect to a differentiation made in legislation on the basis of gender, in relation to the right of male and female persons to assume the surname of their spouse. On 23 October 2002, the State party indicated that the authors could proceed, under the Aliens Act 1937, to assume as family name the surname of the wife. (A/58/40)
- In [Zwaan de Vries v. the Netherlands \(82/1984\)](#), adopted on ...the HRCttee found violations of... It appears from the Follow-up file that in this response author's counsel indicated that the author had received her benefits covering the two years she was unemployed. (A/61/40)
- In [Timmer v. the Netherlands \(2097/2011\)](#), adopted on 24 July 2014, the HRCttee found a violation of article 14, paragraph 5, due to the failure of the State party to provide adequate facilities for the preparation of his appeal and conditions for a genuine review of his case by a higher tribunal. The State party also confirmed that a proposal to abolish the system of leave to appeal, as set out in section 410 (a) of the Code of Criminal Procedure is under way, as part of a wider exercise to modernise the Code. The Committee gave the State an "A" assessment for having struck off the offence, which was the subject-matter of the communication, from the author's criminal record and a "B1" relating to the proposal to amend legislation. (CCPR/C/118/3)
- In [Williams Lecraft v. Spain \(1493/2006\)](#), adopted on 27 July 2009, the Committee found a violation of article 26, read in conjunction with article 2, paragraph 3 for discrimination on the basis of racial profiling. The State party provided a public oral and written apology to the author and initiated training for the police force. (A/66/40)
- In [Matyus v. Slovakia \(923/2000\)](#), adopted on 22 July 2002, the HRCttee found a violation of article 25 (a) and (c), due to inequalities arising in the set-up of electoral districts. Given the time lapse since the elections, the Committee considered that the finding of a violation was in itself a sufficient individual remedy but the State party had an obligation to respond on measures of non-repetition. Subsequently, the State accepted the decision and issued Directives to administrative bodies on the correct application of the offending regulations. (CCPR/C/80/FU/1)

#### Ongoing case with positive elements

- In [Moidunov and Zhumabaeva v. Kyrgyzstan \(1756/2008\)](#), adopted on 23 March 2011, the HRCttee concluded that the State party violated the author's son's rights under articles 6, paragraph 1, and article 7 and failed to properly investigate the circumstances of the author's son's death and the allegations of torture and ill-treatment and thus effectively denied the author a remedy, in violation of her rights under article 2, paragraph 3 read in conjunction with articles 6, paragraph 1 and 7. An initial district court decision rejected the author's claim for compensation; however, the Supreme Court overturned the decision in November 2014, on the basis that it violated material and procedural law. The claim is now back before the first instance court for further consideration on the merits. Given this decision, the author's counsel is optimistic that compensation might be awarded in this case. Article 41(2) of the Kyrgyz Constitution expressly stipulates that the state must provide

restoration and compensation for human rights violations. Counsel indicated that while this provision had never been tested in the past, it would set an important judicial precedent, and would also provide a number of additional advocacy opportunities. Thus, support from the Committee through an ongoing follow-up process would be crucial. The author's counsel thus requested the Committee to resume active follow-up dialogue in the case (it had been suspended during the 112nd session). The Committee decided to resume the follow-up dialogue. On 29 April 2015, Pervomaisky District Court of Bishkek issued a decision ordering Kyrgyzstan to pay compensation to a relative of the deceased Moidunov in the amount of USD 8,300 and to conduct a thorough investigation into the death of Moidunov, who passed away while in police custody. On October 2015, the Court of Appeal decreased the amount of compensation to be paid from KGS 500,000 to 200,000. At the time of writing, compensation had not yet been paid, and the Ministry of Finance had filed an appeal to the Supreme Court in the autumn of 2016. (CCPR/C/116/3, information OHCHR secretariat)

#### State provided a remedy prior to adoption of decision by a treaty body (7 cases)

- In [Pauger v. Austria \(415/1990\)](#), adopted on 5 June 1990, the HRCttee found a violation of article 26 (discrimination) as the author received lower pension benefits than a widow whose social circumstances were similar. In this decision itself, the Committee noted with appreciation that the State party had taken steps to remove the discriminatory provisions of the Pension Act as of 1995. (A/66/40)
- [Bandajevsky v. Belarus, \(1100/2002\)](#), adopted on 28 March 2006, the HRCttee found that the public prosecutor cannot be characterized as having the institutional objectivity and impartiality to be considered an "officer authorized to exercise judicial power", within the meaning of article 9, paragraph 3 and 4. It also found a violation of article 10 paragraph 1, for poor conditions of detention. It considered that the unchallenged fact that the court that tried the author was improperly constituted means that the court was not established by law, within the meaning of article 14, paragraph 1, and thus finds a violation of this provision. It also found that the detention supervisory review cannot be characterized as an "appeal", for the purposes of article 14, paragraph 5. In its follow-up reply, the State party informed the Committee that, in accordance with the ruling of 5 August 2005 by the court of Diatlov region, Grodno oblast, the author had been released early from serving the remainder of his sentence. Thus, he had been released prior to adoption of the decision. (A/61/40)
- In [Foin v. France \(666/1995\)](#), adopted on 9 October 1999<sup>200</sup>, the HRCttee found a violation of article 26, as the argument that the doubling of the length of alternative service in comparison to military service on the grounds that it was the only way to test the sincerity of an individual's convictions, did not satisfy the requirement that the difference in treatment involved in the present case was based on reasonable and objective criteria. It noted with satisfaction in the decision that the State party had changed the law so that similar violations would not occur in the future. Thus, it considered that the finding of a violation constitutes sufficient remedy for the author. The Committee made similar findings in [Marc Venier and Paul Nicolas v. France \(690/1996 & 691/1996\)](#), adopted in 1 August 2000 and [Mr. Richard Maille v. France \(689/1996\)](#), adopted on 31 July 2000 (A/55/40)
- In [Dar v. Norway, 249/2004](#), adopted on 11 May 2007, the State party had breached article 22 by removing the complainant despite the CAT's request for interim measures of protection. In the decision itself, the Committee observed that the State party had facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee noted that the State party had granted the complainant a residence permit for 3 years. By doing so, it had remedied the breach of its obligations under article 22 of the Convention. (A/66/44)

#### Violation itself is sufficient remedy (2 cases)

- In [Rogerson v. Australia \(802/1998\)](#), adopted on 3 April 2002, the HRCttee found that a delay of two years in the delivery of a judgment in a contempt case violated the right to be tried without undue delay as provided by article 14, para. (3)(c) of the ICCPR. The Committee found that this finding was itself a sufficient remedy. As a general measure, the State was asked to publish the Views. ([http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en))
- In [Faure v. Australia \(1036/2001\)](#), adopted on 31 October 2005, the HRCttee found a violation of articles 2, paragraphs 3 in conjunction with 8, on the basis of the incompatibility of a “Work for Dole Programme” with the Covenant. In its decision, the Committee is of the view that in the present case its Views on the merits of the claim constitute 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. (A/61/40)

#### No violation found but positive step taken (2 cases)

- In [Kamal Quereshi v. Denmark \(27/2002\)](#), adopted on 19 August 2003, the CERD found no violation in this case as criminal proceedings had been lodged with respect to the allegations of racist remarks. However, under rule 95, paragraph 3, of its rules of procedure, the Committee requested information on the outcome of the proceedings. Two of the speakers were subsequently convicted and fined for having made racist comments. Four other cases were investigated but prosecution was not pursued, as it was not expected to lead to conviction. The State party further commented that, as reflected in its seventeenth periodic report, between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning allegations of racist statements, 10 of which concerned statements by politicians, only one of whom was acquitted.
- In [M.A.K v. Germany \(214/2002\)](#), adopted on 12 May 2004, return to Turkey, even though the HRCttee did not find a violation of the Convention, it welcomed the State party’s readiness to monitor the complainant’s situation following his return to Turkey and requested the State party to keep it informed about the situation. (A/65/44 and A/66/44)

#### Discontinuances (612 cases by the treaty bodies altogether<sup>201</sup> – below a sample from the HRCttee)

- [N. G. v. Uruguay \(131/1982\)](#), which related to a detention by military authorities and concerned claims *inter alia* of poor conditions of detention and torture. At its twenty-fourth session, the HRCttee discontinued examination of this case following the receipt of a letter from the author, dated 17 January 1985, indicating that the alleged victim had been released. (A/59/40)
- The Committee decided to close the file of four communications following withdrawal by the author ([1168/2003, Santos et al. v. Australia](#); [1230/2003, Ghenifa v. Algeria](#); [1254/2004, Mandavi v. Australia](#); and [1337/2004, Gholipour v. Australia](#)) and to discontinue the consideration of seven communications because counsel lost contact with the author ([1257/2004, Shamsei v. Australia](#)); for having become moot as a result of legislative changes in the State party ([979/2001, Kapuskyi v. Belarus](#)); or because the author and/or counsel failed to respond to the Committee despite repeated reminders ([849/1999, Da Pieve Gerardo et al. v. Spain](#); [974/2001, Korbesashvili v. Georgia](#); [997/2001, Roberts v. Barbados](#); [1203/2003, Sukleva v. The former Yugoslav Republic of Macedonia](#); and [1273/2004, Manhavian v. Australia](#)). (A/60/40)

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<sup>201</sup> 386 by the HRCttee (A/71/40), 216 by the CAT (A/71/44), 1 by the CERD (A/71/18), the 9 by the CEDAW (A/71/38) and none by the CRPD.

- See the following decisions made during the 115<sup>th</sup> and 116<sup>th</sup> session as more examples of discontinuances. In November 2015, the Committee decided to discontinue the following cases: *H. M. v the Netherlands* (2354/2014), because “the author and the State party have reached an agreement on the substantive issue raised in the communication”; *A. E. v. Denmark* (2320/2013), *AbH v. Denmark* (2605/2015), because the authors and the State party had reached agreement on the substantive issue raised in the communications and the authors were no longer at risk of deportation; *H. G. G. et al v. Denmark* (2492/2014), “because the author and the State party have reached an agreement on the substantive issue raised in the communication and the author and her child are no longer at risk of deportation to Italy”; *G. G. K. et al. v. Denmark* (2514/2014), “because the author and the State party have reached an agreement on the substantive issue raised in the communication and the author and her two children are no longer at risk of deportation to Bulgaria”, *H. M. et al v. Denmark* (2553/2015), “because the author and the State party have reached an agreement on the substantive issue raised in the communication and the author and his child are no longer at risk of deportation to Italy.” In March 2016, the Committee decided to discontinue, *M. M v. Zambia* (1145/2002), “on the grounds of failure by the author to respond to the Committee’s requests for comments regarding the information submitted by the State party indicating that the author had been released from prison”; *F.K.H. v. Denmark* (2447/2014), “on the grounds of failure by the author to respond to the Committee’s requests for comments regarding the information submitted by the State party”; *Z. S. v. Denmark and M. S v. Denmark* (2488/2014), “because the authors and the State party had reached an agreement on the substantive issue raised in the communication, and the authors were no longer at risk of deportation”; *Y. A. H. et al v. Denmark* (2506/2014), “because the authors and the State party had reached an agreement on the substantive issue raised in the communication, and the authors and their five minor children were no longer at risk of deportation”; *H. F. A. v. Denmark* (2513/2014), “because the authors and the State party had reached an agreement on the substantive issue raised in the communication, and the authors and their three minor children were no longer at risk of deportation; ” *S.P.B. and B.A.G v. Denmark* (2516/2014), “because the authors and the State party had reached an agreement on the substantive issue raised in the communication, and the authors and their two minor children were no longer at risk of deportation;” *H.F.K and N.M.S. v. Denmark* (2571/2015), “on the grounds of failure by the authors to respond to the Committee’s requests for comments regarding the information submitted by the State party”. <http://juris.ohchr.org/>, [www.ohchr.org/ EN/HRBodies/CCPR/Pages/Jurisprudence.aspx](http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx). [www2.ohchr.org](http://www2.ohchr.org)) and from the Official Document System of the United Nations (<http://documents.un.org>).

## Annex II

### Examples of mechanisms/procedures of implementation

This annex contains information from State party reports, replies to lists of issues, summary records of dialogues between states and treaty bodies and national legislation available publically. Most of the information was received in the context of the HRCtee. Sometimes there is an explanation of the mechanism as described by the State and the act/legislation itself when applicable and available.

#### **A. Mechanisms/Procedures of General Implementation**

In **Argentina**<sup>202</sup>, the Human Rights Secretariat (SDH), through the Federal Human Rights Council, designed and implemented a system of national periodic reports (SIPEN). This system ensures the coordination, creation of an on-going dialogue, exchange of information, experience and best practice with and between the provinces, for the promotion and protection of human rights, including international mechanisms for the protection of universal human rights at regional and sub regional levels. It would appear that this body also coordinates the implementation of treaty body decisions.

In **Australia**<sup>203</sup>, the Government's policy is to consider any decision on individual communications issued by the HRCtee on a case-by-case basis. Upon receipt of the decision, the Attorney-General's Department notifies the government department and state or territory responsible for the action that is the subject of the decision. Where the Committee has issued an adverse decision in a communication, the department conducts a detailed legal analysis before responding to the Committee. The text of the Committee's decision and, where adverse decision have been received, the Australian Government's response, are published on the Attorney-General's Department website.

**The Czech Republic**<sup>204</sup>, established a national implementation mechanism through the Act on Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies, of 2011, 186/2011, the purpose of which is to implement judgments of the European Court of Human Rights and explicitly stipulates that all the provisions of this Act are by analogy applicable for the purposes of proceedings before the Committee.

The Act, together with a related Government resolution, sets formalized channels of complaint among relevant authorities, providing the Office of the Government Agent before the European Court of Human Rights and the UN Human Rights Committee with a coordination function in the implementation process of the Court's judgments and the Committee's decision. The Act stipulates that all public authorities including the judiciary are required to take without undue delay both individual and general measures to put an end to violations of the relevant international instrument found in individual cases.

In this regard, the Government Agent recommends to the Minister of Justice, and through the latter to the Government, what steps should be taken following the finding of a violation, and then coordinates the implementation. The Act does not affect existing competences of executive, legislative and judicial branches. The Office of the Government Agent has long-term and successful experience with the implementation of the Court's judgments against the Czech Republic, including amending national legislation, changing policies and practices of and raising awareness among relevant domestic authorities. This experience together with the

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<sup>202</sup> CCPR/C/ARG/5

<sup>203</sup> CCPR/C/AUS/6

<sup>204</sup> CCPR/C/CZE/Q/3/Add.1

above legislative framework can well contribute to an adequate implementation of the Committee's decision at national level.

The Act states (informal translation) "§ 4<sup>205</sup>: The competent authorities concerned without delay shall take all necessary individual and general measures to end violations of the Convention or the European Union law identified by the final judgment of the Court or the Court of Justice of the European Union and prevent further violations of the Convention or the European Union law on similar grounds on which the Court or Court Justice of the European Union stated its violations. At the request of the Ministry of Justice or Ministry of Foreign Affairs and within the period determined by the authorities, the authorities concerned shall communicate in writing what specific measures to this effect adopted or proposed, or intend to adopt or propose, including the expected timetable for their adoption.

...

## § 6

(1) The *obligation* (emphasise added) to provide information and other cooperation under § 1 to 5 shall apply mutatis mutandis for the purposes of the proceedings before the *UN Committee for Human Rights* (emphasise added).....

(2) Compliance with the duties under this Act may be the procedure laid down for the Justice Department to seek other bodies that represent the Czech Republic in the management of individual cases before other international bodies controlling compliance with international obligations in the field of human rights, arising from the Czech Republic's commitments under international treaties."

In **Chile**<sup>206</sup>, the Human Rights Directorate in the Ministry of Foreign Affairs is responsible for transmitting treaty body decisions to the relevant state bodies and monitoring their implementation.

In **Costa Rica**<sup>207</sup>, an Inter-Institutional Commission was established in 2011 as a permanent advisory body on human rights of the executive branch in order to coordinate the national implementation of international human rights obligations<sup>208</sup>.

In **Denmark**<sup>209</sup>, HRCttee decisions are channelled through the Ministry of Foreign Affairs and then distributed to the relevant authorities for action.

In **Georgia**<sup>210</sup>, by Decree №66, dated 17<sup>th</sup> of March of 2008, the Minister of Justice approved the Statute of the Department of State Representation before International Courts of Human Rights.

According to Article 6 of the Statute, one of the objectives of the Department is to elaborate proposals aimed at effective implementation of decisions made by international courts of human rights<sup>211</sup> and facilitate their execution.

Article 9(2) of the Statute states that the Execution Supervision Unit of the

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<sup>205</sup> The Czech version can be found here - <http://ECrtHR.zakonyprolidi.cz/cs/2011-186>

<sup>206</sup> CCPR/C/CHL/Q/6/Add.1

<sup>207</sup> CCPR/C/CRI/Q/6/Add.1

<sup>208</sup> Costa Rica adopted Act 6889 in 1991, which contains an agreement between the government and the IACHR and states that the judgments of the Court will have the same effect in the domestic legal order as judgments issued by the domestic courts. This is not the case for treaty body decisions.

<sup>209</sup> CCPR/C/SR.3268.

<sup>210</sup> CCPR/C/GEO/Q/4/Add.1

<sup>211</sup> According to the State party, this includes rulings/views/recommendations made by non-judiciary international bodies, such as UN treaty-bodies.

Department is authorized to: “a) elaborate proposals on measures necessary for implementation of decisions/rulings of international human rights bodies, present such proposals to the Minister or supervisor, Deputy Minister and facilitate their execution; b) take necessary measures to inform relevant international bodies on actions undertaken for implementation of decisions of international human rights bodies.”

**In Germany**<sup>212</sup>, the procedures for the implementation of HRCttee Views will vary according to the nature of the case. In general, however, the Federal Ministry of Justice as the Ministry in charge of the implementation of the ICCPR will, as a first step, inform all authorities involved in the relevant case – and all authorities which might be confronted with similar cases in the future – about the decision and provide them with an official translation. The Ministry will then, if necessary, issue an explanatory note in order to explain, for example, necessary changes in administrative practice. If the Views indicate the necessity of legislative changes, it would fall to the Ministry responsible for the relevant law to introduce them. Individual measures, including compensation, if called for, would have to be decided by the Ministry responsible for the relevant action, whether on the federal or on the *Länder* level.

**In Kyrgyzstan**<sup>213</sup>, a Government Decree on the establishment of a Human Rights Coordination Council was adopted in November 2013. The Council is composed of the heads of all state agencies involved in human rights issues, is chaired by the Vice Prime Minister, and is endowed with broad powers to implement international obligations in the field of human rights.

**In Korea**<sup>214</sup>, the lead government agency designated for each international human rights convention coordinates efforts to follow-up on the implementation of decisions and recommendations made by treaty bodies and other human rights mechanisms.<sup>215</sup> During its dialogue with the HRCttee in 2015, the State party stated that human rights legislation had been passed at the recommendation of the National Human Rights Commission of Korea. A task force was considering how the Committee’s decisions on individual complaints could be implemented, either under criminal law or by establishing specific legislation, although the country’s legal framework made that difficult.<sup>216</sup>

**In Lithuania**<sup>217</sup>, the coordination of the implementation of the Committee’s decisions falls within the functions of the Government’s representative to the European Court of Human Rights.

**In Peru**<sup>218</sup>, the Vice-Ministerial Office for Human Rights monitors and follows-up on treaty body decisions and the Inter-American Commission on Human Rights.

**In Serbia**<sup>219</sup>, the Council for monitoring the implementation of recommendations of UN mechanisms for human rights was formed in December 2014<sup>220</sup>. It consists of a

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<sup>212</sup> CCPR/C/DEU/Q/6/Add.1, Oct 2012

<sup>213</sup> CCPR/C/KGZ/Q/2/Add.1

<sup>214</sup> CCPR/C/KOR/Q/4/Add.1

<sup>215</sup> Lead government agencies for core human rights treaties are as follows: The Ministry of Justice assumes responsibility for the ICESCR, the ICCPR and its first protocol, CAT, the UPR process and the NAP; the Ministry of Health and Welfare is responsible for the CRPD and the CRC and its first and second protocols; the Ministry of Foreign Affairs and Trade for the CERD; and the Ministry of Gender Equality and Family for the CEDAW and its protocol. See National Mechanisms for Reporting and Follow-up: An analysis of trends and practices of an emerging key national human rights actor.

<sup>216</sup> CCPR/C/SR.3210, October 2015

<sup>217</sup> CCPR/C/LTU/Q/3/Add.1

<sup>218</sup> CCPR/C/PER/Q/5/Add.1

President and nine members who are civil servants holding positions with relevant state bodies. The sessions of the Council may be attended by the representatives of the interested state bodies, independent state bodies for human rights and organisations of civil society. The Council's responsibilities are: to review and monitor the implementation of recommendations from human rights bodies; to propose measures for the implementation of the recommendations received under the UPR procedure of the Human Rights Council and the recommendations of UN treaty bodies; to give opinions on the progress of human rights during the reporting period and to provide expert explanations about the state of human rights and the results achieved following implementation of recommendations.

In **Spain**<sup>221</sup>, the Views adopted by the HRCttee are implemented by the institutions and departments responsible for the fields in question. The Ministry of Foreign Affairs and Cooperation is responsible for forwarding complaints received in the context of this procedure. Drawing on the information provided by the competent institutions and departments, the Sub-Directorate General for Constitutional Matters and Human Rights of the state Legal Service (part of the Ministry of Justice) drafts reports for the Committee on the measures taken to give effect to the Views. These reports are published in the Official Gazette of the Ministry of Justice.

In **Sweden**<sup>222</sup>, the Views of the HRCttee are distributed by the Ministry for Foreign Affairs to the other ministries concerned. An analysis is made of what action may need to be taken and the Ministry for Foreign Affairs then reports the action taken to the Committee. The Government always distributes the Committee's decision on an individual complaint along with a summary in Swedish to the agencies and courts that were involved in the case at national level and to the Parliamentary Ombudsmen and the Swedish Bar Association. The Committee's observations are also sent to other courts and agencies that can be assumed to be interested. The observations are published on the Government's human rights website: [www.humanrights.gov.se](http://www.humanrights.gov.se).

In **Uzbekistan**<sup>223</sup>, pursuant to Cabinet of Ministers Decision No. 227 of 23 July 2012, one of the tasks of an Interdepartmental Working Group is to review the Committee's Decision – to decide on further steps. This working group also monitors the consideration and settlement of complaints by citizens of violations of their rights and freedoms in general, including complaints of torture and inhuman treatment.

## **B. Legislative/Constitutional measures of general implementation**

**The Czech Republic** see above under "A. Mechanisms of General Implementation" the Act on Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies, of 2011, 186/2011.

It is also noted that according to Article 87, para 1. Lit.i, "The Constitutional Court has jurisdiction: ...to decide on the measures necessary to implement decisions of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented; ..."

In **Kyrgyzstan**<sup>224</sup>, Article 41 (2) of the Constitution reads:

"2. Everyone shall have the right to apply in accordance with international treaties to

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<sup>219</sup> CCPR/C/SRB/3

<sup>220</sup> There are conflicting dates for the formation of the Council December 2014 and 27 March 2015.

<sup>221</sup> CCPR/C/ESP/Q/6/Add.1

<sup>222</sup> CCPR/C/SWE/7

<sup>223</sup> CCPR/C/UZB/Q/4/Add.1

<sup>224</sup> CCPR/C/KGZ/Q/2/Add.1



international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic *shall* (emphasis added) take measures to their restoration and/or compensation of damage.”

**In Peru, until 2004**, articles 39 and 40 of Law N° 23506 and article 101° of the Constitution were in existence.

Article 39 stipulated that, “Article 305 of the Constitution recognizes that persons who consider that their constitutional rights have been violated may address themselves to international jurisdictional organs, in particular the United Nations Human Rights Committee, the Inter-American Commission on Human Rights of the OAS and other that may be established in the future by treaties adhered to by Peru and that would fall in the category referred to in article 105 of the Constitution.”

Article 40 stipulated that, “A resolution of the international organ recognized by the Peruvian state does not require any previous revision or examination to have validity and effective recognition. The Supreme Court of the Republic shall receive resolutions issued by the international organs and shall order their execution and implementation in conformity with the domestic norms and procedures applicable with regard to execution of judgments.”

Article 41 stipulated that, “It is the duty of the Supreme Court of the Republic to transmit to the organism referred to in article 39 the legislation, resolutions and other documents relative to the proceedings that gave rise to the petition, as well as any other elements that in the judgment of the international organ would be necessary for the illustration of the case to better resolve the matter subjected to its jurisdiction.”

Law No. 28237 replaces Law N° 23506 and makes a distinction between “international organizations” with reference to the Human Rights Committee and Inter-American Human Rights Commission (article 114<sup>225</sup>) and other international “judicial bodies” (Art. 115<sup>226</sup>). According to article 114, international organizations to which any person who considers himself injured in the rights recognized by the Constitution or treaties on human rights ratified by the Peruvian state are: the Human Rights Committee of the United Nations, the Inter-American Commission Human rights of the Organization of American states and those to be established in

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<sup>225</sup> Artículo 114.- Organismos internacionales competentes - Para los efectos de lo establecido en el artículo 205 de la Constitución, los organismos internacionales a los que puede recurrir cualquier persona que se considere lesionada en los derechos reconocidos por la Constitución, o los tratados sobre derechos humanos ratificados por el Estado peruano, son: el Comité de Derechos Humanos de las Naciones Unidas, la Comisión Interamericana de Derechos Humanos de la Organización de Estados Americanos ECtHR aquellos otros que se constituyan en el futuro ECtHR que sean aprobados por tratados que obliguen al Perú. Artículo 205.- Jurisdicción Supranacional - Agotada la jurisdicción interna, quien se considere lesionado en los derechos que la Constitución reconoce puede recurrir a los tribunales u organismos internacionales constituidos según tratados o convenios de los que el Perú es parte. ENG UNOFFICIAL: once exhausted domestic remedies, who considers himself injured in the rights recognized by the Constitution may appeal to international courts or bodies constituted under treaties or agreements to which Peru is a party.

<sup>226</sup> Artículo 115.- Ejecución de resoluciones Las resoluciones de los organismos jurisdiccionales a cuya competencia se haya sometido expresamente el Estado peruano no requieren, para su validez ECtHR eficacia, de reconocimiento, revisión, ni examen previo alguno. Dichas resoluciones son comunicadas por el Ministerio de Relaciones Exteriores al Presidente del Poder Judicial, quien a su vez, las remite al tribunal donde se agotó la jurisdicción interna ECtHR dispone su ejecución por el juez competente, de conformidad con lo previsto por la Ley No 27775 que regula el procedimiento de ejecución de sentencias emitidas por tribunales supranacionales.

the future and that are approved by treaties binding on Peru.<sup>227</sup>

Article 115 provides that decisions of judicial bodies whose jurisdiction has been expressly submitted the Peruvian state does not require for their validity and effectiveness, recognition, review, or any prior examination. Such resolutions are communicated by the Ministry of Foreign Affairs to the President of the Judiciary, who in turn refers them to court where domestic jurisdiction was exhausted and has its execution by the competent judge, in accordance with the provisions of Law No. 27775, which governs the procedure for enforcement of judgments issued by supranational courts.<sup>228</sup>

### **C. Reopening of criminal/civil/administrative cases**

In the **Czech Republic**, article 119 of law no. 83/2004 introduced the possibility of an appeal to the Constitutional Court in cases in which an “international jurisdiction” found a violation of an international human rights treaty.<sup>229</sup>

In **Finland**, a final judgment in civil and criminal cases may be challenged by means of a so-called “extraordinary appeal”, which was provided for in Chapter 31 of the Code of Judicial Procedure.

According to, “Section 2 ... (3) If a law enforcement or supervisory body competent in the supervision of international human rights obligations notes a procedural error in the consideration of a case, a complaint may regardless of subsection 2 be made within six months of the date when the final judgment of the supervisory body in question was given.”

The injured party may lodge a request for the annulment of a judgment with the Supreme Court, which would examine the request and decide whether there was reason to annul the judgment. Furthermore, it is possible for the Chancellor of Justice to independently make a request for annulment in cases involving significant public interests. Thus, the Government can submit the Committee’s decision to the Chancellor of Justice, for an assessment of whether there still are grounds for extraordinary appeal.

In **Georgia**, article 310 of the Code of Criminal Procedure, 2014 obliges national courts to review cases on which the European Court of Human Rights found against the state. Several such cases have been reviewed by the national courts in favour of the applicants. Such reviews were currently only applicable to decisions by the European Court of Human Rights, but the Ministry of Justice is in the process of amending the Code of Criminal Procedure so as to extend them to decisions by other international bodies, including the Human Rights Committee. Three separate amendments to the Criminal, Civil and Administrative Codes are ready which will allow national courts to reopen a case on the basis of decisions of the HRCttee, CAT and CEDAW. These amendments have been passed at first hearing by the Parliament. It is hoped that these amendments will be adopted in 2017.

**Hungary** - Act XIX of 1998 on Criminal Proceedings - amended by law 150 (CL) 2011, came into force on 1 January 2012

Chapter XVII JUDICIAL REVIEW: “Section 416 (1) A Judicial review may take place to the benefit of the defendant in the following cases as well:

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<sup>227</sup> Un-official translation

<sup>228</sup> Un-official translation

<sup>229</sup> <https://wcd.coe.int/ViewDoc.jsp?p=&id=984277&Site=COE&direct=true>

g)<sup>230</sup> a body for the protection of human rights, created by way of international treaty established that the conduct of the procedure or the final decision of the court has violated a provision of the international treaty promulgated by law, provided that the Republic of Hungary has submitted herself to the jurisdiction of the international body for the protection of human rights.

(3) A judicial review under article (1) point (g) can take place also if the body for the protection of human rights created by way of international treaty established that the conduct of the procedure constituted such a violation of the provision of the international treaty, which according to this law cannot be remedied by judicial review, only by appeal.”

Also: Act CLI of 2011 on the Constitutional Court stated “If the Constitutional Court has already ruled on the conformity of an applied legal regulation or a provision thereof with the Fundamental Law based on a constitutional complaint or judicial initiative, no constitutional complaint or judicial initiative aimed to declare a conflict with the Fundamental Law may be admitted regarding the same legal regulation or provision thereof and the same right guaranteed by the Fundamental Law, with reference to the same constitutional law context – unless the circumstances have changed fundamentally in the meantime.”<sup>231</sup>

In **Lithuania**, the Code of Criminal Procedure contains a special chapter, “Reopening of a criminal case due to the decisions adopted by the United Nations Human Rights Committee or European Court of Human Rights”.

Article 456 of the Code reads as follows: “Criminal cases, examined by the courts of the Republic of Lithuania, can be reopened when the United Nations Human Rights Committee recognizes that the decision to convict a person is taken in violation of the International Covenant on Civil and Political Rights and its Additional Protocols, or the European Court of Human Rights finds that conviction of a person contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols thereto, if the nature and seriousness of a violation raise doubts regarding the conviction of a person and the continuation of a violation can be remedied only by the reopening of proceedings.”

According to Article 457 of the Code, “an application for the reopening of criminal proceedings before the Supreme Court can be lodged by a person in respect of whom violations of the Convention have been committed, also by the successor of his rights or legal representative.”

In **Norway**, a special provision provides for the reopening of criminal proceedings in consequence of a judgment of the HRCttee or European Court of Human Rights. Section 391(2) of the Criminal Procedure Act provides that:

"Reopening of proceedings may be requested to the benefit of the accused  
2. if an international court or the UN's Human Rights Committee in a case against Norway has found that  
a) the decision is violating a rule of international law binding of Norway, and it must be assumed that a new trial should lead to another decision, or  
b) the procedure which lead to the decision is violating a rule of international law binding upon Norway, if there is reason to assume that the violation may have been decisive for the content of the decision, and reopening of proceedings is necessary to repair the damage caused by the violation."

Even if section 391(2) should not be applicable in a case, reopening of the proceedings might be allowed on the basis of Section 392, which reads: “Even

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<sup>230</sup> Section 406 (1) (b) was supplemented with Section 77 of Act II of 2003.

<sup>231</sup> Venice Commission Report - CDL-AD(2014)036).

though the conditions prescribed in section 390 or 391 are not fulfilled, the court may order the case to be reopened in favour of the person charged when the Supreme Court has departed from a legal interpretation that it has previously adopted and on which the judgement is based. The same applies when special circumstances make it doubtful whether the judgement is correct, and weighty considerations indicate that the question of the guilt of the person charged should be tried anew.”

Section 394 states that a request for reopening of proceedings shall be submitted to the Criminal Cases Review Commission. This special review commission started its work on 1 January 2004. The Criminal Cases Review Commission decides whether the cases should be accepted for reopening and refers cases, which are accepted for reopening to the courts for determination.

The request for reopening can be submitted at any time, and the possibility of reopening proceedings is the same for all types of crimes.<sup>232</sup>

A new Civil Procedure Act was adopted on 17 June 2005. According to section 31-3 (1) d) of this Act the reopening of proceedings can be requested if in a case against Norway an international body has established that the proceedings violated an international convention which has been incorporated in Norwegian law by the Human Rights Act.<sup>233</sup>

Section 31-3 Reopening on grounds of procedural error (1) A petition to reopen a case may be made:.....d) if in a complaint against Norway in respect of the same subject matter it is determined that the procedure has violated a treaty which pursuant to the Human Rights Act of 21 May 1999 No. 30 is incorporated into Norwegian law....

The request must be made within six months after the party making the request became aware of the judgment by the European Court of Human Rights. A request for reopening cannot be made when ten years have expired since the national judgment. According to section 31-5 of the new Civil Procedure Act, a request for reopening will not be accepted if it is unlikely that new proceedings will lead to significant changes for the party concerned.

In **Poland** under the Code of Criminal Procedure Act, which came into force on 1 September 1998, decisions of international human rights organs, which act on the basis of an international treaty ratified by Poland are considered to be a grounds for

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<sup>232</sup> Reopening according to section 391 (2) b) must be “necessary to repair the damage caused by the violation”. This means that reopening is impossible if the damage cannot be repaired or if it has already been repaired. Reopening according to section 391 (2) is limited to cases that have been treated by an international court or the UN’s Human Rights Committee. However, section 392 may in some cases permit reopening of “clone cases”.

<sup>233</sup> According to the Human Rights Act....Section 2 “The following conventions shall have the force of Norwegian law insofar as they are binding for Norway: 1. The Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol no. 11 of 11 May 1994 to the Convention, together with the following protocols: 1. a) Protocol of 20 March 1952, b) Protocol no. 4 of 16 September 1963 on the protection of certain rights and freedoms other than those already included in the Convention and in the First Protocol to the Convention, c) Protocol no. 6 of 28 April 1983 on the abolition of the death penalty, d) Protocol no. 7 of 22 November 1984, The International Covenant of 16 December 1966 on Economic, Social and Cultural Rights, The International Covenant of 16 December 1966 on Civil and Political Rights, together with the following protocols: a) Optional Protocol of 16 December 1966, b) Second Optional Protocol of 15 December 1989 on the abolition of the death penalty. Section 3 - The provisions of the conventions and protocols mentioned in section 2 shall take precedence over any other legislative provisions that conflict with them.

reopening criminal proceedings to the benefit of the convicted person.

Rules on the reopening of criminal proceedings are set out in Articles 540 and 545.

Article 540 § 3 stipulates that: "The proceedings shall be re-opened for the benefit of the accused, when such a need results from a decision of an international authority acting under the provisions of an international treaty which has been ratified by the Republic of Poland".

Article 544 §1 stipulates that: "The question as to whether proceedings should be re-opened, shall be resolved by the Voivodship Court, and the question of re-opening the proceedings concluded by a judgment of the Voivodship Court shall be resolved by the Appellate Court. The court shall decide in a panel of three judges."

Article 544 §2 stipulates that: "The question as to whether proceedings concluded by a judgment delivered by the Appellate Court or the Supreme Court should be re-opened, shall be resolved by the Supreme Court in a panel of three judges."

Pursuant to Article 545, paragraph 2, when the state prosecutor does not file the motion for the re-opening of the proceedings, it should be prepared and signed by a barrister".

The same provisions of the Criminal Code allows for the reopening of domestic proceedings in consequence of a judgment of the European Court of Human Rights.

In **Portugal**, criminal proceedings could be reopened on the grounds that a finding of a UN treaty body constitutes either a "new fact" or a "fact that is contradictory to other facts in a later decision".

Article 449 of the Code of Criminal Procedure enumerates the conditions for the reopening:

"a) if another judgment declared "res judicata" has proved that the evidence of the first decision is false;

b) when another judgment declared "res judicata" has proved that the judge or a member of the jury has committed a crime relating to the exercise of his function;

c) if the facts which have been fundamental for the first decision are contradictory to other facts in a later decision and give serious doubts to the justice of the condemnation;

d) if "new facts" appear after the first decision, application for reopening is possible at each stage of the proceedings, even at the time the convicted is yet in prison."

Paragraph 4 of Article 449 (1, g) states that, reopening constitutes an extraordinary appeal to the Supreme Court of a definitive condemnatory sentence based on its incompatibility with "A binding judgment of the Portuguese state, made by an international body, is irreconcilable with a conviction or raise serious doubts about its fairness."

In the **Russian Federation**, the Constitutional Court stated in its Decision No. 1248-0 of 28 June 2012 that the authorities must fully comply with the Committee's Views. The HRCtee's Views are considered sufficient grounds for a procurator to issue an order to institute proceedings in view of new circumstances, if the violations of the Covenant identified by the Committee could not be corrected by any other means.

Also, paragraph 9 of Decision No. 5, adopted on 10 October 2003 by the Plenum of the Supreme Court, states that in the administration of justice, courts must bear in mind the fact that improper application by them of the universally recognized principles and standards of international law and the international treaties of the Russian Federation may be grounds to repeal or amend a court decision.

Russian Code of Criminal Procedure: Grounds for Resumption of the Proceedings on a Criminal Case Because of New or Newly Revealed Circumstances<sup>234</sup>

The individual concerned may possibly lodge a request with the President of the Supreme Court but only the latter has the right to initiate the reopening of proceedings before the Presidium of the Supreme Court.

According to Articles 413-415 of the Code of Criminal Procedure adopted on 22 November 2001 and entered into force on 1 July 2002 a judgment, a court finding or ruling that has taken legal effect may be reversed, and proceedings in the criminal case may be reopened in view of new or Article 413 § 4 - The new circumstances shall be:

1. Finding by the Russian Federation Constitutional Court that the statute applied by the court in the criminal case is not consistent with the Russian Federation Constitution; 2. Violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the of examination of the criminal case by a court of the Russian Federation, ascertained by the European Court of Human Rights, pertaining to: a) application of a Federal statute inconsistent with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; b) other violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; 3. Other new circumstances.

Article 414 - Time Limits for Reopening Proceedings:

1. The review of a judgment of conviction in view of new or newly discovered circumstances favourable for the convicted person shall not be confined to any time limits.

2. The death of a convicted person shall not be impediment for reopening of proceedings in the criminal case in view of the new or newly discovered circumstances for the purpose of that person's rehabilitation.

3. A review of a judgment of acquittal, or a finding or ruling to dismiss the criminal case, and a review of a judgment of conviction for reasons of the leniency of the sentence or due to the need to apply to the convicted person a criminal statute of a more serious offence, shall be permitted only within the periods of limitations for criminal prosecution set by Article 78 of the Russian Federation Criminal Code, and no later than one year after the day of discovery of the newly discovered circumstances.

4. The day of the discovery of new or newly discovered circumstances shall be deemed:

c) the day when the decision of the European Court of Human Rights on the presence of the violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms takes legal effect – in the instances referred to in Article 413(§4 sub§2) of this Code.

Article 415 - Initiation of Proceedings: 1. The power to initiate proceedings in view of new or newly discovered circumstances shall rest with the procurator, except for the instances envisaged by paragraph 5 of this Article. (...)

Reopening is also possible by virtue of the Constitution. In its judgment in the Koulnev and others case (2 February 1996) the Constitutional Court stated, *inter alia*, as follows (§7): "In establishing the right of appeal before a court, the Constitution of the Russian Federation also provides for, rather than precludes, the

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<sup>234</sup> See CDDH(2006)008 Addendum III Bil - from Steering Committee for Human Rights.

possibility of obtaining redress for miscarriage of justice after the case has been heard by the court whose ruling is recognised in law as final in so far as it is not open to review under the ordinary procedure.

This finding is based on Article 46, paragraph 3 of the Constitution of the Russian Federation which establishes the right of all persons to appeal before interstate bodies for the protection of human rights and fundamental freedoms, in accordance with the Russian Federation's international treaties, provided that all domestic remedies have been exhausted. On the basis of this provision of the Constitution, the decisions of interstate bodies may result in the review of individual cases brought before the supreme courts of the Russian Federation and, consequently, establishes the possibility of authorising the supreme courts to re-open proceedings with a view to altering previous rulings on the case, including rulings by the federal supreme court.

Also, in accordance with Article 304 of the Code of Arbitration Procedure of the Russian Federation of 2002, decisions rendered by arbitration courts of the Russian Federation may be review by the Presidium of the Supreme Arbitration Court of the Russian Federation in case if it is established that these judicial decisions violate rights and freedoms of a person and a citizen guaranteed by universally recognized principles and provisions of international law, international treaties of the Russian Federation, including cases when these violations were established by the European Court of Human Rights.

**In Serbia**, under the Criminal Procedure Code, 2011, requests of the “protection of legality” may be made.

#### Admissibility of Submitting a Request Article 482

An authorised person may submit in accordance with conditions prescribed in this Code a request for the protection of legality against a final decision of the public prosecutor or the court or for a violation of provisions of the procedure which preceded its issuance.

A request for the protection of legality is not allowed against a decision on the protection of legality or violation of provisions of the procedure before the Supreme Court of Cassation which preceded its issuance.

#### Persons Authorised to Submit a Request Article 483

A request for the protection of legality may be submitted by the Republic Public Prosecutor, the defendant and his defence counsel.

The Republic Public Prosecutor may submit a request for the protection of legality both to the detriment and for the benefit of the defendant. A request may be submitted even after the defendant is encompassed by an act of amnesty or a pardon, or the statute of limitations has expired, or the defendant has died, or the penalty has been served in full.

A request for the protection of legality may be submitted by a defendant only through his defence counsel.

The persons referred to in paragraph 1 of this Article may desist from the request until the issuance of a decision of the court on the request for the protection of legality.

#### Contents of the Request Article 484

A request for the protection of legality must specify the reasons for its submission

(Article 485 paragraph 1), and in the case referred to in Article 485 paragraph 1 items 2) and 3) of this Code, a decision of the Constitutional Court or of the European Court of Human Rights must also be submitted.

#### Reasons for Submitting a Request Article 485

A request for the protection of legality may be submitted if by a final decision or decision in the procedure which preceded its issuance:

1) the law was violated;

2) a law was applied which was by a decision of the Constitutional Court found not to comply with the Constitution, universally accepted principles of international law and ratified international agreements;

3) a human right or freedom of a defendant or other participant in proceedings guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols was violated or denied, as determined by a decision of the Constitutional Court or the European Court of Human Rights.

A violation of the law within the meaning of paragraph 1 item 1) of this Article exists if a provision of criminal procedure was violated by a final decision or in the procedure which preceded its issuance, or if the law was applied incorrectly to the finding of fact determined in the final decision.

A request for the protection of legality for the reasons stipulated in paragraph 1 items 2) and 3) of this Article may be submitted within three months of the date when the person (Article 483 paragraph 1) was delivered the decision of the Constitutional Court or the European Court of Human Rights.

A defendant may submit a request for the protection of legality in connection with violations of this Code (Article 74, Article 438 paragraph 1 items 1) and 4), and item 7) to 10), and paragraph 2 item 1), Article 439 items 1) to 3), and Article 441 paragraphs 3 and 4) made in the first-instance proceedings and the proceedings before the appellate court, within 30 days from the date of the delivery of the final decision, provided that he has used an ordinary legal remedy against that decision.

#### **Slovakia**

From 2000 to 2002, § 75 (1) of Act No 226/2000 Coll of Laws read as follows: "In case the Committee on Human Rights submits an admitted complaint to the attention of the Government of the Slovak Republic alleging that by a measure, decision or other act of an organ of public power of the Slovak Republic any right of the claimant according to the International Covenant on Civil and Political Rights was violated, the Government submits the case without delay to the Constitutional Court which initiates proceedings according to Part III, Chapter two, Paragraph fourth of this Act".

#### **Uzbekistan (similar procedures in Belarus and Tajikistan)**

Article 522. Grounds for Reopening Proceedings in View of Newly Discovered Circumstances

Grounds for reopening of proceedings in view of newly discovered circumstances shall be as follows:

1. established by a court sentence which has taken legal effect knowingly false testimony of the victim or witness, or opinion of the forensic examiner, as well as forgery of physical evidence, official records of investigative and court actions, and of other documents, or knowingly wrong translation, which entailed entering an illegal and invalid sentence or finding or ruling;



2. established by a court sentence which has taken legal effect criminal abuses of inquiry officer or investigator in charge of investigating the case, or of prosecutor in charge of oversight of the investigation, which led to issuance of an illegal and ungrounded sentence or finding or ruling; established by a court sentence which has taken legal effect criminal abuses of judges, which took place during consideration of the case;

3. other circumstances unknown to the court when issuing the sentence, finding, or ruling, which, *per se* or together with other previously established circumstances, evidence of the innocence of the convicted or commission of a crime of other seriousness than that he was convicted for, or the guilt of the acquitted or of the person, in whose regard the case was dismissed.

#### Article 510. Persons Entitled to Bring Complaint against Sentence and Finding or Ruling by Way of Supervision Procedure

A sentence and finding or ruling on cases, which have been considered by way of appellate or cassation procedure, may be complained against by the persons, specified in Article 498 of this Code by way of supervision procedure. (As amended by the Law of 14.12.2000).

#### Article 511. Persons Entitled to Bring Protest against Sentence and Finding or Ruling in Court of Supervision

Cases with sentences and findings, or rulings may be considered by way of supervision procedure only after they have been considered by way of appellate or cassation procedure along with a protest of a chief judge of a court, prosecutor, or their deputies, who are empowered by law to do so. ...

#### Article 513. Time Limits for Review of Sentences, Findings, and Rulings of Courts by Way of Supervision Procedure

Review by way of supervision procedure of a sentence of conviction, finding, or ruling, if the protest requests to apply a criminal statute of a more serious offense, to aggravate penalty, or other changes that entail worsening of the position of the convicted, as well as review of a sentence of acquittal or a court finding or ruling to dismiss a criminal case shall be permitted only within one year after they have taken effect.

In **Kyrgyzstan**, Article 384 part 1 of the Code of Criminal Procedure allows cases to be opened for the same reason and under part 2-1 paragraph 3 of the same Article treaty body decisions are included as evidence of such new facts or discovered circumstances.

#### **D. Mechanism for provision of compensation**

In **Austria**<sup>235</sup>, once Views are adopted by the UN Human Rights Committee under the Optional Protocol to the CCPR which determine a violation of human rights, they are dealt with by the "relevant bodies" with a view to ascertaining how such matters can be resolved and preventing any similar violations in future. If no consensus can be reached with the author, the latter is free to turn to the Austrian Ombudsman Board. However, any redress is made on an "*ex gratia*" basis.

Austrian Constitution: Chapter VIII Ombudsman Board

Art. 148a. (1) Everyone can lodge complaints with the ombudsman board (Commission for Complaints from the Public) against alleged maladministration by the Federation, including its activity as a holder of private rights, mainly for alleged

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<sup>235</sup> CCPR/C/AUT/Q/5/Add.1

violation of human rights, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the ombudsman board. The complainant shall be informed of the investigation's outcome and what action, if necessary, has been taken.

(2) The ombudsman board is *ex officio* entitled to investigate its suspicions of maladministration by the Federation including its activity as a holder of private rights, mainly of violations of human rights it assumes. ....

**Colombia** enacted Act 288/1996, of 5 July 1996<sup>236</sup>, which establishes instruments for the payment of damages to victims of human rights violations in the basis of final decisions of international human rights bodies.

The Congress of Colombia Decrees:

Article 1. The National Government has to pay, according to the fulfilment of the procedures established in the present law, the payment of damages caused by human rights violations that have been declared, or will be declared, in express decisions of international human rights bodies that will be mentioned in this law.

Article 2. For the purposes of the present law conciliations or damages settlements can only be fixed regarding those cases of human rights violations that comply with the following requirements:

That there exists a prior, written and express judgment issued by the Human Rights Committee of the International Pact of Civil and Political Rights or of the Inter-American Human Rights Commission, which concludes in a concrete case that the Colombian state has committed human rights violations and that it establishes that it should indemnify the corresponding damages.

That there exists a prior favourable opinion on the fulfilment of the decision of the international human rights body that has to be issued by a Committee constituted by: the Ministry of the Interior; the Ministry of Foreign Relations; the Ministry of Justice and Law; and the Ministry of National Defence.

Paragraph 1. The Committee will pronounce a favourable opinion on the fulfilment of the judgment of the International Human Rights Body in all the cases that comply with all the factual and legal conditions established in the Political Constitution and in applicable international treaties. For this it must be taken into account, among other elements, the collected evidence and the decisions taken in the judicial, administrative, or internal disciplinary proceedings and in actions taken before the respective international body.

Paragraph 2. When the Committee considers that the conditions established in the prior paragraph are not met, it should communicate this to the National Government so that they can present a legal brief or bring the appropriate appeal, if any, against the judgment in question before the competent international body. In any case, if the applicable international treaty does not contemplate a second instance or if the term to appeal the judgment has expired, the Committee should render favourable opinion on the fulfilment of the judgment of the international body.

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<sup>236</sup> Unofficial translation by CEJIL; law not available in English, Annex II of the publication "Implementing the decisions of the Inter American System of Human Rights, Contributions for the legislative process", CEJIL, 2009, available at [ECrTHR.cejil.org/en/publicaciones](http://ECrTHR.cejil.org/en/publicaciones)

Paragraph 3. The Committee has forty-five (45) days, counted from the official notification of the pronouncement of the concerned international body, in order to emit the corresponding opinion.

The mentioned period of time will begin from the date in which the present Law enters into force, in respect of the pronouncements of the international human rights bodies that have issued prior to said date.

Paragraph 4. There will be place for the procedure established in the present law, even if the actions established in the domestic law had expired, for the effect of obtaining the indemnity of damages for acts of human rights violations, always and when the requirements established in this article are met.

Article 3. If the Committee emits favourable opinion on the fulfilment of the judgment of the international body, the National Government will solicit a settlement hearing before an agent of the Public Ministry attached to the Contentious Administrative Tribunal that would be competent, according with internal law, in order to settle the controversy object to settlement, in a term not to exceed thirty (30) days.

Upon receipt of the request, the agent of the Public Ministry should summon the interested parties so that they can meet before it and present the means of evidence that will be settled to demonstrate their legitimate interest and the amount of the damages.

The agent of the Public Ministry will serve notice of the provided evidence and of the formulated claims by those involved to the National Government and will summon the parties to a settlement hearing.

The Ombudsman will be summoned to the settlement proceedings.

Article 4. The public entity, to which the public server responsible for the acts has been linked, will proceed to determine by mutual agreement with the persons that have demonstrated legitimate interest, and based on the means of evidence that are part of the procedure, the amount of the payment of the damages.

The settlement will be about the amount of the compensation. For the valuation of the damages the criteria of current national jurisprudence will be applied.

In any case, only the damages that are duly proven and that have a direct causal link with the facts that are object of the judgment of the international body will be recognized.

Article 5. The settlement established in the present Law can be advanced during the contentious administrative proceeding initiated in order to obtain the payment of damages derived from the same acts that are referred to in the judgment of the international human rights body, even when the opportunity to have settlement in such body has precluded.

Article 6. For the purpose of the payment of damages that will be object of the settlement, the evidence that will be taken into consideration, amongst others, are those that were presented in judicial proceedings; internal administrative or disciplinary and, especially, those valued by the international body to issue the corresponding decision.

Article 7. If an agreement is reached, the parties will sign an act that will be presented to the Public Ministry for his approval. Said act will be immediately sent to the respective Contentious Administrative Tribunal in order for the corresponding appointed Magistrate to decide if the settlement resulted harmful for the state's

patrimonial interests, or if it can be nullified. In either of these cases, the Magistrate will dictate a reasoned ruling stating his decision.

Article 8. The document approving the settlement will have the status of a recognized judicial credit and effects of a definitively settled judicial decision and, by thus, will put an end to the entire process that has been initiated against the state by the beneficiaries of the compensation in relation with the facts pertaining to the settlement.

Article 9. In the matters of the settlement procedure not established in the present Law, the Law 23 of 1991 will be applied, and all other legal provisions and regulations that regulate settlements.

Article 10. If a decision is produced that declares a settlement agreement as damaging to the patrimonial interests of the state or invalid, those interested can:

a) Reformulate before the Magistrate that knew the case the terms of the settlement, in order to facilitate a possible approval; b) if the nullity is not absolute, rectify it and submit the settlement agreement once again to consideration of the Magistrate; y c) turn to the proceedings provided for in the following article.

Article 11. If no agreement is reached after the settlement procedure is concluded, those interested can go before the competent Contentious Administrative Tribunal, to process the liquidation of damages through the incidental procedure, according to what is provided for in articles 135 and the following of the Civil Procedures Code. In the process of said incident, arbitration proceedings can be held.

The decision about the incident of regulation of damages will be adopted by the Tribunal in the terms established in the Contentious Administrative Code and could be appealed accordingly to the procedures established by law.

Article 12. The indemnities that are paid or are made according to this Law, will activate the action of repetition that is established in the second subsection of article 90 of the Political Constitution.

Article 13. The Ministry of Justice will designate the employees of the National Government who can have access to the administrative, disciplinary, and judicial files, including the files before the military criminal jurisdiction, in order to be able to act before the international human rights bodies and, when it is the case, to verify the identity of those who should benefit from the indemnities that concern the present Law, and also the amount of the damages that have to be established.

Article 14. The power given to the National Government by the present Law should be exercised in the form that avoids the phenomenon of double or excessive payment of damages.

Article 15. The National Government will send a copy of the procedure to the respective international human rights body, for the effects provided in the applicable international instruments.

In **Denmark**, Act No. 940 on Legal Aid for the Submission and Conducting of Complaints before International Treaty Bodies under Human Rights Conventions (December 1999) guarantees legal aid to cover equitable costs in certain cases where the international complaints body requests the State party to provide observations on a complaint. There is no official translation of the law. The government website [http://www.civilstyrelsen.dk/da/Fri\\_proces/English.aspx](http://www.civilstyrelsen.dk/da/Fri_proces/English.aspx) Provides some extracts from the law. "An application hereon can be sent to the Department of Civil Affairs. The rules can be found in Act no. 940 of 20/12/1999 on

legal aid for lodging and conducting complaints for international complaints boards pursuant to the European Convention on Human Rights. Free legal aid is granted if the international complaints body has requested the legal comments of the Danish government to the complaint, cf. section 2. Under pursuance of section 3 of the act, legal aid is granted for specific reasons, even though the government is not requested to give legal comments to the complaints. The conditions hereof are consistent with the Danish Administration of Justice Act, section 329 on legal aid. The case has to be of principle or of public interest or the case has to be of significant importance to the applicant's social or occupational situation. It is a basic condition that the applicant has exhausted national remedies first. Legal aid covers reasonable, necessary expenses for the conduct of a lodged complaint as well as a reasonable fee for a lawyer. Legal aid does not indicate that the State covers all expenses connected to the case."

It should be noted that the law was changed in March 2016 adding another condition for obtaining legal aid (Act No. 263). This change is not yet reflected on the web site.

In **Lithuania**, article 1 of the Law of the Republic of Lithuania on Reimbursement of Damage Caused by Illegal Actions by Public Authorities, "provides for <...> the enforcement of the decisions of the Human Rights Committee", and under article 2(1), the decisions of the Committee are referred to as one of the "other international institutions" envisaged by this law to on the basis of which annual budgetary appropriations will be used for compensation. The holder of these appropriations is the Ministry of Justice. The law is not publically available.

In **Finland**, according to the Decision of the Supreme Administrative Court given in 1993 (KHO 1993 A 25), an author who is not satisfied with the amount of compensation offered by a relevant Ministry has the right to bring his/her case before the Administrative Court and an appeal to the Supreme Administrative Court may be made for a final assessment of the compensation.

In **Greece**, when the HRCttee finds a violation of the author's rights and the domestic law provides for the liability of the state, the author, acting in accordance with the provisions of the Introductory Law to the Civil Code (Articles 104, 105), may file a lawsuit for civil damages against the state (or Municipality in accordance with the provisions of domestic legislation) claiming that the unlawful act or omission violated his/her (Covenant) rights, on the basis of the Committee's Decision (see, *mutatis mutandis*, Court of Cassation judgment 1816/2007).

Article 105 states that, "The state shall be liable for compensation for illegal acts or omissions of organs of the state in the exercise of the public power entrusted to them, unless such acts or omissions violated a provision of general interest ..."

In **Kyrgyzstan**, the Constitution was amended in 2010, to include article 41 (2) Article 41 ... "2. Everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage."

In **Peru**, the legal basis for the payment of compensation was based on the opinion of the Ministry of Justice expressed in Oficio No. 203-2015/JUS/VMDHAJ



PERÚ

Ministerio  
de Justicia  
y Derechos Humanos

Viceministerio  
de Derechos Humanos  
y Acceso a la Justicia

"Decenio de las Personas con Discapacidad en el Perú"  
"Año de la Diversificación productiva y del Fortalecimiento de la Educación"

Miraflores, 27 MAR. 2015

OFICIO N° 203 -2015-JUS/VMDHAJ

Economista  
**CÉSAR ENRIQUE CHANAMÉ ZAPATA**  
Viceministro de Prestaciones y Aseguramiento en Salud  
Ministerio de Salud  
Presente.-

**Asunto:** Vinculatoriedad de los Dictámenes emitidos por los órganos sobre derechos humanos constituidos según tratados de los que el Perú es parte, derivados de una denuncia/comunicación individual.

De mi consideración:

Es grato dirigirme a usted para saludarlo cordialmente y, en esta ocasión referirme a los casos KL vs Perú (Comunicación N° 1153/2003), seguido ante el Comité de Derechos Humanos de Naciones Unidas (Comité DDHH), y el caso LC vs Perú (Comunicación N° 22/2009) analizado por el Comité para la Eliminación de la Discriminación contra la Mujer (Comité CEDAW).

Como es de su conocimiento, el Ministerio de Justicia y Derechos Humanos es la entidad competente, a nivel nacional, en materia de derechos humanos y, específicamente el Viceministerio de Derechos Humanos y Acceso a la Justicia es el órgano encargado de formular, coordinar, ejecutar y supervisar la política en materia de derechos humanos y acceso a la justicia bajo su competencia, de conformidad con la respectiva política nacional.

En esa línea me permito afirmar que las decisiones adoptadas por los Comités de Naciones Unidas antes señalados fueron expedidas en función a las facultades otorgadas a dichos órganos al ratificar el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, en el caso del Comité de DDHH; y el Protocolo Facultativo de la Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer, en el caso del Comité CEDAW.

Tal como deriva del Informe adjunto elaborado por la Dirección General de Derechos Humanos del Ministerio de Justicia y Derechos Humanos, el cual hago mío, el Tribunal Constitucional, cuyos criterios interpretativos son obligatorios para todos los poderes públicos, considera que las decisiones emanadas de un procedimiento en el que un organismo internacional actúa como una instancia cuasi jurisdiccional (es decir, en el que actúa como un tercero independiente e imparcial con poder resolutorio y en que se garantizan a las partes las garantías esenciales del debido proceso) **son vinculantes para el Estado peruano**. Criterio sustancialmente análogo deriva de la jurisprudencia de la Corte Interamericana de Derechos Humanos.

Cabe recordar, en concordancia con lo señalado, que el artículo 205° de la Constitución Política establece que, agotada la jurisdicción interna, "quien se considere lesionado en los derechos que la Constitución reconoce puede recurrir a los tribunales u organismos





PERÚ

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de Derechos Humanos  
y Acceso a la Justicia

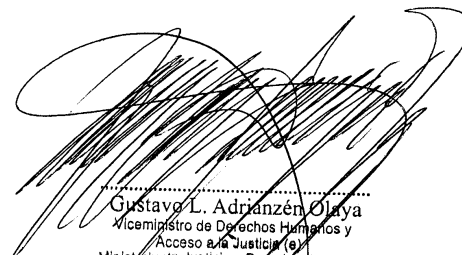
*"Decenio de las Personas con Discapacidad en el Perú"*  
*"Año de la Diversificación productiva y del Fortalecimiento de la Educación"*

internacionales constituidos según tratados o convenios de los que el Perú es parte". Una interpretación de este precepto acorde con el principio de respeto por la dignidad de la persona humana y del derecho fundamental de acceso a la justicia, exige concluir que existe un deber constitucional de cumplimiento por parte del Estado no solo de las decisiones de tribunales jurisdiccionales, sino también de organismos internacionales constituidos según tratados de los que se es parte.

En razón a lo expuesto, podemos afirmar que tales decisiones resultan jurídicamente obligatorias al Estado peruano, con lo cual en los casos concretos de KL y LC, corresponde otorgar las indemnizaciones y medidas de rehabilitación dispuestas.

Sin otro particular, hago propicia la ocasión para expresarle las seguridades de mi consideración personal.

Atentamente,



.....  
Gustavo L. Adrianzen Olaya  
Viceministro de Derechos Humanos y  
Acceso a la Justicia (e)  
Ministerio de Justicia y Derechos Humanos

Cc. Dra. Dalia Suárez, Jefa del Gabinete de Asesores del MINSA  
Cc. Dr. Luis Valdéz, Procurador del MINSA

DS. No 017-2008-JUS Reglamento del Sistema de Defensa Jurídica del Estado below, in particular article 53 is the law indicating responsibility for the payment of compensation in **Peru**

“(Vigente desde el 29.DIC.2008) ....

TITULO VI

DE LA EJECUCIÓN Y CUMPLIMIENTO DE LAS DECISIONES JUDICIALES,  
ARBITRALES Y SUPRANACIONALES

Artículo 53. - De la ejecución y cumplimiento de las decisiones judiciales, arbitrales y supranacionales

Las Entidades del Estado asumirán con recursos propios el cumplimiento de las sentencias.

Dirección de Arbitraje Administrativo del OSCE

Cuando sean dos o más las entidades obligadas al pago, éste se realizará de manera mancomunada y en partes iguales, con conocimiento del Consejo.

Cuando en la Sentencia no se individualice a la Entidad del Estado obligada al cumplimiento de la obligación o del pago, será el Consejo quien lo determine, mediante el respectivo Acuerdo.”

### **E. Expulsion cases under immigration legislation**

In **Australia**, under s.48B of the Migration Act 1958 the Minister for Immigration and Multicultural Affairs may intervene on behalf of an applicant to allow a further application for a protection visa if he thinks it is in the public interest to do so. Section 48B is applied when 1. A new substantive and credible claims or new information have been provided by the applicant; and/or there has been a relevant change in circumstances in the applicant's country of nationality. This provision has been used as a result of new issues and information raised in Committee decisions<sup>237</sup>.

Under section 48B of the Migration act 1958, the Minister may determine that section 48A does not apply to non-citizen

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that [section 48A](#) does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.

(2) The power under subsection (1) may only be exercised by the Minister personally.

(3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

(a) sets out the determination; and

(b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(4) A statement under subsection (3) is not to include:

(a) the name of the non-citizen; or

(b) any information that may identify the non-citizen; or

(c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned--the name of that other person or any information that may identify that other person.

(5) A statement under subsection (3) is to laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the determination is made between 1 January and 30 June (inclusive) in a year--1 July in that year; or

(b) if the determination is made between 1 July and 31 December (inclusive) in a year--1 January in the following year.

(6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

In **Canada**, following findings of violations of treaty bodies relating to non-refoulement cases, authors can make an application for permanent residence status on the basis of an humanitarian and compassionate (H&C) leave application. Bearing in mind that this procedure is discretionary, according to the State party in

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<sup>237</sup> Follow-up response from the State on *Elmi v. Australia* (120/1998).



its response to the HRCtee<sup>238</sup>, the criteria taken into account in the assessment include: the hardship that the individual might face upon removal, such as discrimination which does not rise to the level of persecution; political instability; and wide-spread violence, and other adverse country conditions that would have a direct, negative impact on the individual as those individuals should apply for refugee status. An H&C assessment will also consider the best interests of any children affected by the removal, and more generally the level of establishment in Canada and the nature of any family ties. An H&C application may be reopened when the applicant has requested correction of a clerical or other error, or if the decision-maker failed to comply with procedural fairness. In addition, when new evidence is submitted by the applicant, the decision-maker may decide to re-open the H&C application depending on factors such as the passage of time, and the relevance and reliability of the evidence.

Article 25 of the Immigration and Refugee Protection Act sets out the law

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

In **Denmark**, several provisions of the Danish Aliens Act have been used to implement treaty body decisions. Residence permits may be granted on the basis of article 9c (1) or article 7 (2).

Article 9c (1), states that “upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including with regard for family unity and, if the alien is under the age of 18, regard for the best interests of the child.”

Article 7. (1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention Relating to the Status of Refugees (28 July 1951).

Article 7 (2), states that “upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as mentioned in the first sentence hereof is also considered an application for a residence permit under subsection (1).”

Article 50, states that “50. (1) If expulsion under section 49(1) has not been enforced, an alien claiming that a material change in his circumstances has occurred, see section 26, may request that the public prosecutor bring before the court the matter of revocation of the expulsion.....”

In **Norway**, the legal basis for granting residence permits on humanitarian grounds is Section 38 of the 2008 Immigration Act: Residence permits on the grounds of strong humanitarian considerations or a particular connection with Norway

A residence permit may be granted even if the other conditions laid down in the Act are not satisfied provided there are strong humanitarian considerations or the foreign national has a particular connection with the realm.

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<sup>238</sup> CCPR/C/CAN/Q/6/Add.1

To determine whether there are strong humanitarian considerations, an overall assessment shall be made of the case. Importance may be attached to, among other things, whether (a) the foreign national is an unaccompanied minor who would be without proper care if he or she were returned, (b) the foreign national needs to stay in the realm due to compelling health circumstances, (c) there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit, (d) the foreign national has been a victim of human trafficking.

In cases concerning children, the best interests of the child shall be a fundamental consideration. Children may be granted a residence permit under the first paragraph even if the situation is not so serious that a residence permit would have been granted to an adult.

In the assessment of whether to grant a permit, importance may be attached to considerations relating to immigration control, including (a) possible consequences for the number of applications based on similar grounds, (b) social consequences, (c) the need for control, and (d) respect for the other provisions of the Act.

When there is doubt regarding the identity of the foreign national, when the need is temporary, or when other particular grounds so dictate, it may be determined that (a) the permit shall not provide the basis for a permanent residence permit, (b) the permit shall not provide the basis for residence permits under chapter 6 of the Act for the foreign national's family members, (c) the permit may not be renewed, or (d) that the validity period of the permit shall be shorter than one year. The King may by regulations make further provisions.

The basis for reversing/reopening an administrative decision without appeal is Section 35 of the 1967 Public Administration Act. The rules for reversing a decision with appeal is Section 28-34.

#### § 35. (reversal of an administrative decision in the absence of an appeal)

"In the absence of an appeal, an administrative agency may reverse its own administrative decision if

- a) the reversal is not to the detriment of any person to whom the administrative decision is directed or who directly benefits thereby, or
- b) notification of the administrative decision has not reached the person concerned and the administrative decision has not been publicly announced, or
- c) the administrative decision must be deemed invalid.

If the conditions prescribed in the first paragraph are fulfilled, the administrative decision may also be reversed by the appellate instance, or by another superior agency.

If consideration for other private individuals or the public interest so indicates, the appellate instance or superior authority may reverse the subordinate agency's administrative decision to the detriment of the person to whom the administrative decision is directed or who directly benefits thereby, even if the conditions prescribed in the first paragraph, b or c, are not fulfilled. In such cases, notification that the administrative decision will be reviewed must be sent to him within three weeks from the date on which notification of the administrative decision was sent, and notification that the administrative decision has been reversed must be sent to him within three months from the same date. In the case of a review of an administrative decision in an appeal case, notification that the administrative decision has been reversed must nevertheless be sent to the person concerned within three weeks.

The second and third paragraphs shall not apply to municipal, county municipal or central government agencies which are appellate instances pursuant to section 28,

second paragraph, first or second sentence. Central government appellate instances may, however, rescind administrative decisions that must be deemed invalid. Such restrictions on the right to reverse an administrative decision as are provided for in the first, second and third paragraphs shall not apply when the right to amend is based on another statute, on the administrative decision itself or on general provisions of administrative law.

In **Sweden**, under Chapter 12, Section 12 of the Aliens Act (2005:716) the enforcement of a refusal of entry or expulsion order shall, as a main rule, be suspended if so requested by an international body that is competent to examine complaints from individuals. Chapter 5, Section 4 of the Aliens Act provides that if an international body has found that a refusal of entry or expulsion order is contrary to a Swedish commitment under a convention, a residence permit shall be granted to the person covered by the order, unless there are exceptional grounds against granting a residence permit.

In **Switzerland**<sup>239</sup>, the basic law dealing with non-refoulement cases is the federal law on asylum “Le Loi sur l’Asile (Act 142.31)” federal statute on asylum law ([www.admin.ch](http://www.admin.ch) > Droit federal > Recueil systématique > Rechercher “142.31”), in particular its art. 2 et seq., 44 et seq., 49 et seq. and 58 et seq. This law establishes the concept of refugee, asylum and the provision of resident permits in non-refoulement cases as well as “temporary admission”. The State Secretary for Migration reviews decisions of the CAT. In a number of cases, the state provided the authors with “temporary admission” the implementation of which is governed by chapter 11 of the Federal Act on Foreign Nationals of 16 December 2005. “Under the terms of art. 83 (3), Federal Foreign Nationals Act, enforcement is not lawful when sending the foreign national to his/her state of origin or a third state runs contrary to the commitments of Switzerland in international law”.

According to the state, despite its name, “temporary admission” could only be lifted if there were a radical political change in the country of origin. If provisional admission were lifted, the foreign national would have internal means of appeal (art. 112, Federal Foreign Nationals Act). Furthermore, the status ceases to apply if the person concerned leaves Switzerland permanently or obtains a residency permit (art. 84 (4), Federal Foreign Nationals Act). On the latter point, a provisionally admitted foreign national may submit a request for a residence permit after living in Switzerland for five years. The permit is granted based on a person’s level of integration and family situation (art. 84 (5), Federal Foreign Nationals Act). Lastly, under certain conditions, the spouse and underage children may benefit from family reunification (art. 85 (7), Federal Foreign Nationals Act)

#### **F. Recognition in friendly settlement of obligation to implement**

Within the context of the Inter-American System, **Argentina** adopts friendly settlements by means of Article 44 of Law no. 6757 which regulates extrajudicial agreements. It is not clear whether the same law is used in the context of the treaty bodies.

In **Ecuador**, the State based its friendly settlement mechanism used to provide remedies in HRCttee cases on article 215<sup>240</sup> of the Constitution of 1998 (since repealed).

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<sup>239</sup> Switzerland has not ratified the Optional Protocol to the ICCPR but it has ratified the Convention against Torture and made the declaration under article 22.

<sup>240</sup> Artículo 215.- El Procurador General será el representante judicial del Estado y podrá delegar dicha representación, de acuerdo con la ley. Deberá reunir los requisitos exigidos para ser ministro de la Corte Suprema de Justicia.

Article 215. The Attorney General shall be the legal representative of the state and may delegate such representation, according to the law. He/she must meet the requirements to be a Minister of the Supreme Court.<sup>241</sup>

#### Agreement on follow-up to the decision of the Human Rights Committee

#### BACKGROUND

The State of Ecuador, through the Office of the state Procurator-General, in its endeavour to promote and protect human rights and in view of the great current importance to the international image of Ecuador of unqualified respect for human rights as the underpinnings of a fair, worthy, democratic and representative society, has resolved to give fresh impetus to the growth of human rights in Ecuador.

The Office of the state Procurator-General has initiated conversations with all who have suffered violations of human rights, the objective being to arrive at amicable settlements that seek to make amends for the injury caused. The state of Ecuador [is] aware that, in strict accordance with its obligations under the International Covenant on Civil and Political Rights and other agreements on human rights under international law, any violation of an international obligation that has led to injury entails a duty to make appropriate restitution. Monetary compensation and the criminal punishment of the culprits being the fairest and most equitable way of doing so, the Office of the state Procurator-General and Mr. Jorge Oswaldo Villacres Ortega, duly represented by his special assignee, Sister Elsie Hope Monge Yoder, have resolved to strike an agreement on follow-up to the points made in Decision No. 481/1991 by the Human Rights Committee.

#### PARTIES ATTENDING

The following attended the conclusion of the present agreement on follow-up:

(a) On the one hand, Dr. Ramón Jiménez Carbo, the state Procurator-General, as attested by the letter of appointment and certificate of office appended hereto as proof of competence; and

(b) On the other hand, Mr. Jorge Oswaldo Villacres Ortega, duly represented by his special assignee, Sister Elsie Hope Monge Yoder, as attested by the special power granted before Dr. Fabian E. Solano P., Twenty-Second Notary of the Canton of Quito, appended hereto as proof of competence.

#### RESPONSIBILITY OF THE STATE AND ACCEPTANCE OF CLAIM

The State of Ecuador acknowledges its international responsibility for having violated the human rights of Mr. Jorge Oswaldo Villacres Ortega recognized in articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights, in view of the fact that the latter was subjected to torture, inhuman and degrading treatment at the hands of agents of the state, a fact that the state has been unable to undo and has rendered the state accountable before society.

Given this background, the state of Ecuador accepts the facts set forth in complaint No. 481/1991 currently before the Human Rights Committee and undertakes to take such steps as are necessary to make restitution and compensate the victim or, failing the latter, his assignees and successors, for the injury caused by the said violations.

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<sup>241</sup> Un-official translation.

## INDEMNIFICATION

Given this background, the state of Ecuador, through the state Procurator-General acting as the sole judicial representative of the state of Ecuador in conformity with article 215 of the Political Constitution of the Republic, promulgated in the Official Register No. 1 and in force since 11 August 1998, awards Mr. Jorge Oswaldo Villacres Ortega lump-sum compensatory indemnification of twenty-five thousand United States dollars (US\$ 25,000) or its equivalent in national currency calculated at the exchange rate in effect at the moment when this agreement is signed, payable from the General state Budget.

This indemnification covers the resultant injury, loss of earnings and attendant mental injury suffered by Mr. Jorge Oswaldo Villacres Ortega and any other claim that the latter or members of his family may have in relation to the matters referred to in this agreement, domestic and international legal standards being duly observed, and is payable from the General state Budget, to which end the Office of the state Procurator-General shall give notice to the Ministry of Finance and Public Lending to honour this obligation within 90 days of the signing of this document.

## PUNISHMENT OF THE CULPRITS

The state of Ecuador, through the Office of the state Procurator-General, undertakes to prompt the Office of the Attorney-General and the competent judicial organs to bring to civil, criminal and administrative justice those persons who, in the performance of state functions or by taking advantage of public authority, are presumed to have taken part in the alleged violation.

The Office of the state Procurator-General undertakes to prompt the competent public or private bodies to furnish legally supported information that will permit the said persons to be put on trial. The trial, if it takes place, will be conducted subject to the constitutional and legal order of the state of Ecuador; thus no proceedings will be instituted against persons in respect of whom a final judgement in relation to the alleged act or violation has been handed down by the nation's tribunals and courts.

## RIGHT OF ACTION FOR RECOVERY

The state of Ecuador, reserves the right to bring an action for recovery, under article 22 of the Political Constitution, against the persons found to be responsible for the human rights violation by means of a final and firm judgement handed down by the country's courts, in accordance with article 14 of the International Covenant on Civil and Political Rights.

## EXEMPTION FROM TAX AND DELAY IN PERFORMANCE

The payment to be made by the state of Ecuador to the person to whom this agreement on follow-up relates shall be exempt from all existing and future taxation with the exception of the "1% tax" on circulating capital. Should the state incur a delay of more than 90 days from the signature of this agreement on follow-up, it shall pay interest on the sum owed corresponding to the current bank interest at the three banks with the largest client bases in Ecuador for the entire duration of the delay.

## INFORMATION

The state of Ecuador, through the Office of the state Procurator-General, undertakes to report to the Human Rights Committee within three months on the state's compliance with the obligations assumed by virtue of this agreement on follow-up.

In keeping with its regular practice and its obligations under the International Covenant on Civil and Political Rights, the Human Rights Committee shall oversee compliance with this agreement.

#### UNDERLYING LAW

The compensatory indemnification awarded by the state of Ecuador to Mr. Jorge Oswaldo Villacres Ortega is provided for in articles 22 and 24 of the Political Constitution of the Republic for breaches of constitutional norms and other provisions of the national legal order, and in the International Covenant on Civil and Political Rights and other international human rights agreements.

This agreement on follow-up to the Decision of the United Nations Human Rights Committee is based on respect for the human rights recognized in the International Covenant on Civil and Political Rights and other international human rights agreements and in the policy of respecting and protecting human rights of the national Government of the Republic of Ecuador.

A copy of the citizen's identity card of Sister Elsie Hope  
NOTIFICATION AND OFFICIAL APPROVAL

Mr. Jorge Oswaldo Villacres Ortega expressly authorizes the state Procurator-General to bring this agreement on follow-up to the attention of the Human Rights Committee for its official approval and ratification in all particulars.

#### ACCEPTANCE

The parties participating at the signature of this agreement freely and voluntarily express their assent to and acceptance of the provisions above, placing on record that they are hereby putting an end to the dispute regarding the international responsibility of the state of Ecuador for the affected rights of Mr. Jorge Oswaldo Villacres Ortega which has been being pursued before the United Nations Human Rights Committee.

#### PROOF OF COMPETENCE

The following documents are incorporated into this agreement on follow-up as proof of competence:

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In witness and acceptance whereof, the parties append their signatures in the city of San Francisco de Quito on the twenty-fifth day of February, one thousand nine hundred and ninety-nine.

(Signed)

Dr. Ramón JIMÉNEZ CARBO state Procurator-General

(Signed)

Sister Elsie Hope MONGE YODER  
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