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Human Rights Committee

Consideration by the Human Rights Committee at its 117th, 118h and 119th sessions of communications received under the Optional Protocol to the International Covenant on Civil and Political Rights*

Summary

The present report expands on the information contained in the annual report of the Human Rights Committee covering the period from 1 April 2016 to 29 March 2017 and the 117th, 118th and 119th sessions of the Committee (A/72/40). It provides a detailed account of the Committee's activities under the Optional Protocol to the International Covenant on Civil and Political Rights regarding the communications procedure and includes excerpts of relevant decisions and Views adopted. The complete list of communications dealt with during the period under review is contained in the annex.

* Adopted by the Committee at its 119th session (6-29 March 2017).

Contents

I. Introduction

1. The present report expands on the information contained in the annual report of the Human Rights Committee covering the period from 1 April 2016 to 29 March 2017 and the 117th, 118th and 119th sessions of the Committee (A/72/40). It provides a detailed account of the Committee's activities under the Optional Protocol to the International Covenant on Civil and Political Rights regarding the communications procedure and includes excerpts of relevant decisions and Views adopted. The complete list of communications dealt with during the period under review is contained in the annex.

2. Individuals who claim that any of their rights under the Covenant have been violated by a State party may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 169 States that have ratified, acceded to or succeeded to the Covenant, 116 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol.

A. Progress of work

3. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 2,970 communications concerning 92 States parties have been registered for consideration by the Committee, of which 210 were registered during the period covered by the present report. At present, the status of the 2,970 registered communications is as follows:

(a) Consideration concluded by the adoption of Views under article 5 (4) of the Optional Protocol: 1,200, in 994 of which violations of the Covenant were found;

(b) Declared inadmissible: 679;

(c) Discontinued or withdrawn: 395;

(d) Not yet concluded: 542.

4. At its 117th, 118th and 119th sessions, the Committee adopted Views on 60 cases and concluded the consideration of 24 cases by declaring them inadmissible. The Views and final decisions adopted by the Committee at those sessions are available through the treaty body case law database (http://juris.ohchr.org/), as well as from the details on jurisprudence available on the OHCHR website (per session) (www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx). They are also accessible through the treaty body database on the OHCHR website (www2.ohchr.org) and from the Official Document System of the United Nations (http://documents.un.org).

5. The Committee decided to discontinue the consideration of 25 communications for such reasons as withdrawal by the author, or because the author or counsel failed to respond to the Committee despite repeated reminders, or because the authors, who had expulsion orders pending against them, were ultimately allowed to stay in the countries concerned.

6. The table below sets out the pattern of the Committee's work on communications over the past six years (communications dealt with from 2010 to 31 December 2016).

Year	*New cases registered*	*Cases concluded*[a]	*Pending cases at 31 December*
2016	211	113	599

Year	*New cases registered*	*Cases concluded*[a]	*Pending cases at 31 December*
2015	196	101	532
2014	191	124	456
2013	93	72	379
2012	102	99	355
2011	106	188	352
2010	96	94	434

[a]Total number of cases decided (by the adoption of Views, inadmissibility decisions and decisions to discontinue consideration).

B. Interim measures under rule 92 of the Committee's rules of procedure

7. Under rule 92 of its rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on appropriate occasions, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected under the Covenant, or when issues concerning the health of the alleged victim are at stake. During the period under review, the Special Rapporteur on new communications and interim measures issued requests for interim measures in 38 cases.

C. Protection measures

8. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the Committee, acting through its Special Rapporteur on new communications and interim measures, requested, upon registration of the case, that the State party take the author's state of health into consideration and adopt all necessary measures to provide him with proper medical care in order to prevent irreparable harm to his health.

9. In case No. 2219/2012 (*Nasyrlayev v. Turkmenistan*), the Committee, in the course of the procedure, recalled that the State party should abstain from any acts of pressure, intimidation or reprisal against the authors of communications and their relatives made in connection with the communications brought before the Committee. The State party, however, did not respond to this request.

D. Individual opinions

10. In its work under the Optional Protocol, the Committee seeks to adopt decisions by consensus. However, pursuant to rule 104 of the Committee's rules of procedure, members can add their individual opinions (concurring or dissenting) to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible. During the period under review, individual opinions were appended to the Committee's Views and decisions concerning cases Nos. 2124/2011 (*Rabbae et al. v. Netherlands*), 2128/2012 (*Kerrouche v. Algeria*), 2140/2012 (*I.T. v. Kazakhstan*), 2157/2012 (*Belamrania v. Algeria*), 2205/2012 (*Agazade and Jafarov v. Azerbaijan*), 2216/2012 (*C. v. Australia*), 2219/2012 (*Nasyrlayev v. Turkmenistan*), 2220/2012 (*Aminov v. Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*), 2225/2012 (*Nurjanov v. Turkmenistan*), 2245/2013 (*Purna v. Nepal*), 2317/2013 (*Ortikov v. Uzbekistan*), 2226/2012 (*Uchetov v. Turkmenistan*), 2378/2014 (*A.S.M. and R.A.H. v. Denmark*), 2379/2014 (*Ahmed v. Denmark*), 2425/2014 (*Whelan v.*

Ireland), 2464/2014 (*A.A.S. v. Denmark*), 2469/2014 (*E.U.R. v. Denmark*), 2530/2015 (*F. and G. v. Denmark*) and 2608/2015 (*R.A.A. and Z.M. v. Denmark*).

II. Issues considered by the Committee

11. This section contains information only on cases where particularly relevant isssues of admissibility raised which allowed the Committee to develop or underscore its own jurisprudence. Cases where issues of admissibility were dealt with by the Committee following well-established jurisprudence, referred to in previous annual reports, are not mentioned.

12. A high number of cases or specific claims were declared inadmissible for lack of substantiation under article 2 of the Optional Protocol. A specific form of lack of substantiation is represented by cases where the author invites the Committee to re-evaluate issues of fact and evidence addressed by domestic courts. The Committee has repeatedly recalled its jurisprudence that it is not for it to substitute its views for the judgement of the domestic courts on the evaluation of facts and evidence in a case, unless the evaluation is manifestly arbitrary or amounts to a denial of justice. If a jury or court reaches a reasonable conclusion on a particular matter of fact in the light of the evidence available, the decision cannot be held to be manifestly arbitrary or to amount to a denial of justice. Claims involving the re-evaluation of facts and evidence have thus been declared inadmissible under article 2 of the Optional Protocol.

A. Procedural issues

1. Victim status (Optional Protocol, art. 1)

13. In case No. 2124/2011 (*Rabbae et al. v. Netherlands*), the authors claimed that the acquittal of Mr. Geert Wilders, member of parliament, on charges of insult of a group for reasons or race or religion and incitement to hatred and discrimination was contrary to articles 20(2), 26 and 27 of the Covenant. The Committee noted the State party's objection to admissibility on the grounds that the authors lacked victim status and that the communication was in essence an '*actio popularis*', as the authors failed to establish that the statements by Mr. Wilders would personally affect them. In this respect the Committee recalled its jurisprudence that "a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can, in the abstract, by way of an *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant". Accordingly, any person claiming to be a victim of a violation of a right protected by the Covenant must demonstrate either that a State party has by an act or omission already impaired the exercise of his right or that such impairment is imminent, basing his arguments for example on legislation in force or on a judicial or administrative decision or practice. In applying this principle, the Committee has recognized that where an individual is in a category of persons whose activities are, by virtue of the relevant legislation, regarded as contrary to law, they may have a claim as 'victims'. Moreover, in *Toonen v. Australia*, although the legislative provisions challenged by the author had not been enforced by the authorities for a number of years, the author pointed, inter alia, to derogatory and insulting remarks and a "campaign of official and unofficial hatred" directed at homosexual persons, and claimed that the mere existence of the legislation fueled discrimination, harassment of, and violence against, the homosexual community. The Committee concluded that the author had made reasonable efforts to demonstrate that the threat of enforcement and the pervasive impact of the continued existence of these

provisions on administrative practices and public opinion had affected him and continued to affect him personally sufficient to establish his status as a victim.

14. The Committee noted that the authors did not bring abstract claims as members of the general population of the State party. The authors are Muslims and Moroccan nationals, and alleged that Mr. Wilders' statements specifically target Muslims, Moroccans, non-Western immigrants, and Islam. The authors accordingly are members of the category of persons who were the specific focus of Mr. Wilders' statements. They further alleged that they felt personally and directly affected by Mr. Wilders' hate speech and suffered the effects of it in their daily lives, including through attacks on the internet, and that they had been adversely affected by the signal given to the public, through the acquittal, that Mr. Wilders' conduct was not criminal. The authors joined the criminal proceedings as alleged injured parties pursuant to section 51(a) CCP. The Committee further noted that Mr. Rabbae chaired the national consultation body of Moroccans in the Netherlands, complained about Mr. Wilders' statements to the police and spoke in court about research data on intolerance and racism and the position of Moroccans in the State party. Ms. A.B.S. testified before the court that in 2010, she had been driven into by a bicyclist who screamed at her making explicit reference to Wilders' statements. The third author, Ms. N.A., after testifying before the court on the impact of Wilders' statements, received numerous threatening messages, as a result of which she decided not to testify again. In view of the foregoing, the Committee considered that the authors were members of the particular group targeted by Mr. Wilders' statements and thus persons whom article 20(2) is intended to protect, and that Mr. Wilders' statements had specific consequences for them, including in creating discriminatory social attitudes against the group and against them as members of the group. The Committee accordingly considered that the authors had sufficiently substantiated, for purposes of admissibility, that their claims were not merely hypothetical.

2. Examination under another procedure of international investigation or settlement (Optional Protocol, art. 5 (2) (a))

15. In case No 2088/2011 (*B.H. v. Austria*), the Committee recalled its jurisprudence in which it states that a decision on inadmissibility amounts to an "examination", for the purpose of article 5 (2) (a) of the Optional Protocol, when it entails at least the implicit consideration of the merits of a complaint. However, the author's complaint was declared inadmissible by the European Court owing to non-exhaustion of domestic remedies. The Committee thus did not consider itself precluded from examining the author's claim pursuant to article 5 (2) (a) of the Optional Protocol.

3. Exhaustion of domestic remedies (Optional Protocol, art. 5 (2) (b))

16. Pursuant to article 5 (2) (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, it is the Committee's constant jurisprudence that the rule of exhaustion applies only to the extent that those remedies are effective and available. The State party is required to give details of the remedies which it submitted had been made available to the author in the circumstances of his or her case, together with evidence that there would be a reasonable prospect that such remedies would be effective. Furthermore, the Committee has held that authors must exercise due diligence in the pursuit of available remedies. Mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.

17. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the Committee took note of the State party's argument that the communication should be declared inadmissible pursuant to article 5 (2) (a) of the Optional Protocol, given that the acts constituting the basis for the communication were pending before the Inter-Parliamentary Union (IPU). The author brought the case to the attention of this

organization, which, in response, contacted several authorities of the State party to request their comments and sent fact-finding missions to the country. The Committee also noted the author's comments to the effect that the IPU Committee on the Human Rights of Parliamentarians should not be considered to be a procedure of international investigation or settlement but rather a body whose mission is to promote through dialogue the settlement of cases involving the violation of parliamentarians' human rights; and to the effect that the decisions of the IPU Committee and those of the IPU Governing Council are merely advisory in nature. The Human Rights Committee considered that the IPU is not an intergovernmental organization and that the aim of its bodies is not to establish whether or not a State has fulfilled its obligations under an international human rights convention to which that State is a party — in this case, the Covenant and its Optional Protocol. The Committee therefore concluded that it was not precluded, under article 5 (2) (b) of the Optional Protocol, from considering the communication.

18. In case No. 2152/2012 (*S.P. v. Russian Federation*), the State party challenged the admissibility of the communication for non-exhaustion of domestic remedies on the ground that the author failed to file an appeal before the Supreme Court of the Russian Federation. The Committee noted, however, hat the State party did not specify the type of appeal available to the author. The Committee also noted that the State party had not challenged the author's submission that the only remaining remedy for him would be to request a supervisory review. The Committee recalled its jurisprudence according to which the filing of requests for supervisory review to a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.The State party had not shown, however, whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning degrading treatment of detainees by Detention Centre personnel. In these circumstances, the Committee considered that it was not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the communication. A similar conclusion was reached in case No.2089/2011 (*Korol v. Belarus*).

19. In case No. 2082/2011 *(Levinov v. Belarus*), the Committee took note of the State party's objection that the author had failed to request the Prosecutor's office to initiate a supervisory review of the domestic courts' decisions. The Committee recalled its jurisprudence, according to which a petition to Prosecutor's office to initiate supervisory reviewof court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. Accordingly, it considered that it was not precluded by article 5 (2) (b), of the Optional Protocol from examining the communication. A similar conclusion was reached in case No. 2093/2011(*Misnikov v. Belarus*).

20. In case No. 2101/2011 (*Evrezov v. Belarus*), the Committee took note of the statistics provided by the State party on a number of supervisory review appeals submitted and upheld by the Supreme Court officials. It noted, however, that these statistics did not specify whether and in how many cases the petitions to the Chair of the Regional Court or the Supreme Court for supervisory review procedure were successful in cases concerning the right to freedom of expression and the right to peaceful assembly. In such circumstances the Committee found that article 5 (2) (b) of the Optional Protocol did not preclude it from considering the communication. A similar conclusion was reached in case No.2109/2011 (*Basarevsky and Rybchenko v. Belarus*)

21. In case No. 2124/2011 (*Rabbae et al. v. Netherlands*), the authors claimed that the acquittal of Mr. Geert Wilders, member of parliament, on charges of insult of a group for reasons or race or religion and incitement to hatred and discrimination was contrary to

articles 20(2), 26 and 27 of the Covenant. The Committee noted the State party's contention that because Mr. Wilders was not convicted, the authors' civil claim within the criminal proceedings could not be examined. However, the authors could still bring a separate civil action against Mr. Wilders before a civil court on the grounds of an unlawful act, pursuant to article 6:162 of the Civil Code, even if they did not seek compensation. A successful civil action would enable the authors to ask for a ban of future statements by Mr. Wilders or to request a declaratory decision that Mr. Wilders' statements were unlawful. The Committee also noted the authors' arguments that such a civil action in this case was not an effective remedy, because their aim was not to seek compensation but to have a determination as to whether an offence under article 137d of the Criminal Code had been committed.

22. The Committee observed that a civil action under article 6:162 of the Civil Code would have allowed the authors to seek pecuniary or non-pecuniary damages for a tort for unlawful acts committed by Mr. Wilders, as well as declaratory relief. However, the Committee also observed that the authors did not seek to obtain civil compensation for any tort committed by Mr. Wilders. What they sought, through their participation in the national judicial proceedings, was a judgement against him by a criminal court for the important and distinct public force of a verdict establishing guilt or innocence under section 137d CC, a provision intended to implement the State party's obligation under article 20(2) of the Covenant. Accordingly, the authors chose the remedy afforded by the State party that was most specifically tailored to their aim. The Committee considered that this determination could only be obtained in criminal proceedings.The Committee therefore concluded that it was not prevented, under article 5(2)(b), from examining the communication.

23. In case No. 2157/2012 (*Belamrania v. Algeria*), the Committee recalled that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations. Although Mohammed Belamrania's family brought his summary execution to the attention of the competent authorities on many occasions, the State party had not undertaken any thorough and rigorous investigation into the serious allegation of the extrajudicial execution of the author's father. Moreover, the State party had failed to demonstrate that an effective remedy was available given that Order No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation,was still applied despite the Committee's recommendations that it should be brought into line with the Covenant. The Committee was also concerned that, in spite of three reminders having been addressed to the State party, no information or observations on the admissibility or merits of the communication had been received. In the circumstances, the Committee found that it was not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

24. In case No. 2245/2013 (*Purna v. Nepal*), concerning the sexual abuse of a suspected Maoist supporter by army officers, the Committee noted the State party's claim that domestic remedies had not been exhausted because, on the one hand, the author failed to use the transitional justice mechanism established by the TRC Act and passed on 25 April 2014, and, on the other hand, she failed to file a criminal complaint for rape or a compensation claim for torture within the established legal time limit.

25. With regard to the transitional justice system mechanism, the Committee noted the author's argument that such mechanism was not available, since the Truth and Reconciliation Commission had not been established to date, nor was this mechanism an effective remedy in light of its non-binding nature and the numerous flaws identified by reports and by the Supreme Court itself, which ruled that the TRC Act was unconstitutional and contrary to international law. The Committee recalled its jurisprudence that it is not

necessary to exhaust avenues before non-judicial bodies to fulfil the requirements of article 5 (2) (b) of the Optional Protocol. The Committee considered that the Commission established under the TRC Act would not constitute an effective remedy for the author.

26. As to remedies available within the Nepalese criminal justice system, the Committee noted that the author tried to file a First Information Report (FIR) concerning the crime of rape and other inhumane and degrading acts with the District Police Office, which was rejected based on the 35-day statute of limitations for the crime of rape, and that she appealed this decision all the way to the Supreme Court of Nepal. The Committee noted that the author explained both in her written FIR as well as in her communication before the Committee that she was unable to file a claim within the legally established time frame given the severe physical and psychological injuries sustained as a result of torture, and given the lack of legal assistance. In view of the legal and practical limitations on filing a complaint for rape in the State party and taking into consideration the efforts made by the author to file such a complaint, the Committee considered that this remedy was both ineffective and unavailable to the author.

27. With regard to the remedy under the Torture Compensation Act (1996), the Committee recalled that compensation for offences as serious as those alleged in this communication did not substitute for the obligation of State authorities to investigate and bring charges against alleged perpetrators. The Committee noted that such claims for compensation were limited to a maximum compensation of Nr 100,000 and were subject to a 35-day statute of limitations. The Committee recalled its previous jurisprudence in which it stated that the 35-day statutory limit for bringing claims under the Torture Compensation Act was in itself flagrantly inconsistent with the gravity of the crime. The Committee therefore considered that this remedy was also ineffective and unavailable to the author. Accordingly, the Committee concluded that it was not precluded by article 5 (2) (b) of the Optional Protocol from examining this communication.

B. Substantive issues

28. This section contains information only on cases where the Committee developped or underscored its jurisprudence on the provisions of the Covenant. Substantive issues dealt with by the Committee following well-established jurisprudence are not referred to.

1. The right to an effective remedy (Covenant, art. 2 (3))

29. In case No. 2125/2011 (*Tyan v. Kazakhstan*), the Committee took note of the author's allegations that he was tortured when questioned by the police officers as a witness and a suspect, respectively, and that the investigation of his claims was ineffective. The Committee noted the arguments of the domestic authorities that the author's allegations of torture and the results of the investigation were considered by the trial court. The State party, however, did not present any documents in support of its arguments. From the information before it, the Committee observed that not only did the trial court not consider the author's allegations of torture, but that it also prevented the author from speaking about them in front of the jury. In light of this, the Committee found that there had been a violation of the author´s rights under article 2 (3), read in conjunction with article 7, of the Covenant due to the lack of effective investigation of his torture allegations.

30. In case No. 2245/2013, concerning the author's claim of rape by members of the army, the Committee noted that the grounds alleged by the Nepalese authorities for refusing to register the author's complaint were based on the 35-day statute of limitation applicable to the crime of rape under domestic legislation. The Committee considered that such an unreasonably short statutory period for bringing complaints for rape was flagrantly inconsistent with the gravity and nature of the crime and that it had a disproportionately

negative effect on women, who were predominantly the victims of rape. Accordingly, the Committee concluded that the 35-day statute of limitation for the crime of rape under Nepalese law prevented the author from accessing justice and constituted a violation of article 2 (3), read in conjunction with articles 7 and 26, of the Covenant.

31. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the Committee noted the author's claim that his rights were violated as a result of his abduction on 27 June 2012 and his incommunicado detention by security agents until 10 October 2012. The State party denied these allegations and maintained that the author was not abducted but rather went into hiding following the charges of rape that were brought against him. The Committee also noted that, on 16 August 2012, the author's wife lodged a complaint before the Attorney General for kidnapping and incommunicado detention against persons unknown and that, on 15 October 2012, the author himself lodged a complaint before the Judge Advocate of the Armed Forces for kidnapping, incommunicado detention and ill-treatment. The author's contention that none of these complaints was ever investigated had not been disputed by the State party. The Committee recalled its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant which states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the Committee took the view that the lack of any investigation by the authorities into the complaints and the authorities' failure to provide any response to the author and his wife concerning the follow-up given to the respective complaints constituted a violation of article 2 (3), read together with article 9, of the Covenant.

32. In case No. 2164/2012 (*Basnet v. Nepal*), the Committee noted the author's allegations regarding the disappearance of her husband. It observed that promptly after losing contact with her detained husband in May 1999, the author approached several police stations searching for him; that although the police at the Police Headquarters in Naxal, Kathmandu, denied her access to her husband, she was allowed to hand over some clean clothes for him and an on-duty police gave her some dirty clothes belonging to her husband; that after 10 June 1999 when she allegedly last saw him in the hands of the police in the Police Headquarters' premises from a distance, she continued inquiring as to his fate and whereabouts, but she received contradicting information. The author approached different police offices seeking information, and later filed a writ of habeas corpus before the Supreme Court and complained to the National Human Rights Commission. Despite the author's efforts, more than 17 years after the disappearance of her husband, no thorough and effective investigation has been concluded by the State party in order to elucidate the circumstances surrounding his detention, enforced disappearanceandalleged deaths, and no criminal investigation has even been started to bring the perpetrators to justice. The State party failed to explain the effectiveness and adequacy of investigations carried out by the authorities and the concrete steps taken to clarify the circumstances surrounding the disappearance and possible death of the author's husband. It had also failed to locate his mortal remains and return them to his family. Therefore, the Committee considered that the State party failed to conduct a prompt, thorough and effective investigation into the disappearance. Additionally, the Rs. 100,000 received by the author as interim relief did not constitute an adequate remedy commensurate to the serious violations inflicted. Accordingly, the Committee concluded that the facts before it revealed a violation of article 2 (3), in conjunction with articles 6 (1), 7, 9 and 16, with regard to the author's husband; and article 2 (3), read in conjunction with article 7 of the Covenant, with respect to the author.

33. A similar conclusion was reached in cases Nos. 2184/2012 (*Nakarmi v. Nepal*), 2185/2012 (*Dakhal v. Nepal*) and 2259/2013 (*Boathi v. Algeria*).

2. Right to life (Covenant, art. 6)

34. In case No. 2127/2011 (*Akunov v. Kyrgyzstan*), concerning the death in custody of the victim after alleged torture, the Committee observed the State party's explanation, with reference to the conclusions of criminal investigations carried out by the Kyrgyz authorities, that Mr. Akunov had committed suicide by hanging himself; that abrasions and bruises on his body could have been caused by convulsions as a result of the hanging; and that the investigation did not establish any evidence confirming that he was subjected to beatings by police officers. The Committee observed, however, that these explanations did not plausibly address a number of critical issues raised in the communication, such as the nature and extent of the injuries established on Mr. Akunov's body, according to the report of the Forensic Medicine Evidence Board; the findings of the State Center of Forensic Examination that Mr. Akunov's clothes were damaged due to friction or dragging along the floor;the testimonies of witnesses according to which Mr. Akunov made repeated cries while being beaten outside of the Naryn City Department of Internal Affairs that the police would kill him and his calls for help; and the lack of any apparent motive for suicide, given the fact that the day before his death he was determined to pursue his civic activism by requesting a meeting with the authorities to discuss a possibility of organizing political protests in Naryn. The Committee noted that the State party did not provide any information on the thoroughness of the inquiries that had been undertaken to address these issues. The Committee further noted that the State party failed to explain whynone of the police officers involved in assaulting Mr. Akunov outside of the Naryn City Department of Internal Affairs has ever been investigated as suspects. The Committee therefore considered that the above factors, taken together, and in the absence of persuasive arguments by the State party rebutting the author's suggestion that his father was tortured and arbitrarily killed while in custody, led it to conclude that the State party was responsible for violating Mr. Akunov's rights under articles 6 (1) and 7 of the Covenant. The Committee also concluded that the State party's investigation into the allegations of torture, and the highly suspicious circumstances of Mr. Akunov's death while in the State's custody, which resulted in the imposition of a suspended sentence on B.K. for failing to prevent Mr. Akunov's alleged suicide, were inadequate, falling short of the State party's obligations under articles 6 (1) and 7, read alone and in conjunction with article 2 (3).

35. In case No. 2157/2012 (*Belamrania v. Algeria*), the Committee noted the author's statement to the effect that, on the night of 13 to 14 July 1995, some 30 armed and uniformed paratroopers of the Fifth Airborne Battalion of the Algerian People's National Army, raided Mohammed Belamrania's house and proceeded to arrest him; that the following afternoon the victim was taken by military convoy to an unknown destination; that a few days later, several individuals who had been arrested at the same time as Mohammed Belamrania were released and informed his family that he was being detained at the military barracks of El Milia; that despite the steps taken by the family to ascertain the victim's fate, the authorities took no action; that 11 days after the victim's arrest, his brother, Youssef Belamrania, was informed that several persons had been executed in Tenfdour by paratroopers of the Fifth Airborne Battalion stationed at the El Milia barracks and that one of the victims might be Mohammed Belamrania; and that Youssef Belamrania then went to the location and recognized the mutilated, bullet-ridden body of his brother Mohammed Belamrania, whose hands were bound with metal wire and who showed unmistakable signs of torture and had been abandoned by the side of the national highway.

36. The Committee also noted the author's allegation that the authorities demanded that the family pay 120,000 dinars and provide a written admission that Mohammed Belamrania belonged to a terrorist group, in exchange for the return of his body, which was in a coffin sealed by police with a ban on opening it, and a burial permit issued by the public prosecutor of El Milia without an autopsy or investigation having been conducted, despite the fact that, according to the author, witnesses had seen the soldiers line up many persons by the side of the road in Tenfdour and summarily execute them with automatic weapons,

and despite the family's many attempts to have the central police station and the court of El Milia open an investigation into Mohammed Belamrania's death. The Committee further noted that, even though it was obviously not a case of enforced disappearance but rather one of an extrajudicial execution by military personnel, the family was issued with a missing person report by the Gendarmerie unit in El Kennar.

37. The Committee further took note of the author's and his family's fear of being subjected to reprisals by the authorities for having sought to verify the circumstances of Mohammed Belamrania's death, pursuant to articles 45 and 46 of Order No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, which criminalize all complaints about the Algerian defence and security forces. Referring to its jurisprudence, the Committee recalled that the State party cannot apply the provisions of the Charter for Peace and National Reconciliation to persons who invoke the provisions of the Covenant or who have submitted or may submit communications to the Committee. The Covenant requires the State party to show concern for the fate of every person and to treat everyone in a manner that respects the inherent dignity of the human person. Given that the amendments recommended by the Committee have not been introduced, Order No. 06-01 contributes, in the present case, to impunity and cannot be considered compatible with the provisions of the Covenant.

38. The Committee further recalled that, according to its jurisprudence, the burden of proof cannot rest solely with the authors of a communication, especially when the authors and the State party do not have equal access to the evidence and when the State party is often in sole possession of the relevant information, such as information related to the arrest and execution of Mohammed Belamrania. In the absence of any rebuttal by the State party, the Committee attached due weight to the author's allegations and found that the State party denied Mohammed Belamrania the right to life in particularly serious circumstances, in view of the fact that he was clearly the victim of a summary execution by members of the State party's regular army, in violation of article 6 (1) of the Covenant.

39. In case No. 2259/2013 (*Boathi v. Algeria*), the Committee noted that the author's son was last seen taking a bus on 17 January 1994 and that the author and her family had been without news of him since that day. The Committee also noted that, at the Oued Koriche police station, Officer A.Z. told the prosecutor of Baïnem court in Algiers that he had arrested Brahim El Boathi but later told the author that he had arrested and killed her son. The Committee took note of the many contradictory pieces of information regarding Brahim El Boathi's fate, including the refusal on 2 May 2000 to issue a disappearance decision, implying that the Algerian authorities still believed him to be alive at that time. The Committee noted that the State party had not provided any evidence to clarify the conflicting information provided to the author concerning the fate of Brahim El Boathi, nor to confirm the date or the circumstances of his possible death. It recalled that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. In the light of the statements by Officer A.Z. and the many years since Brahim El Boathi's disappearance, it was highly likely that, the absence of a body notwithstanding, he was the victim of summary execution by Officer A.Z. or that he died in detention. The Committee noted that the State party had produced no evidence to indicate that it had fulfilled its obligation to protect the life of Brahim El Boathi. The Committee therefore found that the State party had failed in its duty to protect Brahim El Boathi's life, in violation of article 6 (1) of the Covenant.

40. In case No. 2184/2012 (*Nakarmi v. Nepal*), the Committee observed that the State party had not challenged the author's allegations that, in September 2003, the author approached the BhairabNath Barracks and the Lagankhel Barracks of the Royal Nepalese

Army in Kathmandu inquiring as to her husband's whereabouts and fate, as well as the Nepal Police Headquarters in Naxal and the District Police Office in Hanuman Dhoka, Kathmandu. However, the authorities denied that he had been detained on several occasions. This position was maintained by the authorities before the Supreme Court within the writ of mandamus proceedings instituted by the author. On the other hand, the Committee also observed that, according to reports issued by OHCHR-Nepal and the National Human Rights Commission in 2006 and 2009, respectively, testimonies by former detainees at the BhairabNath Barracks indicated that the author's husband was last seen in those Barracks in the custody of the Army between December 2003 and February 2004, that he fell very ill, and that it was believed that he died as a result of torture. Further, a decision of the Supreme Court of Nepal of 1 June 2007, concerning the habeas corpus petitions of 83 disappeared persons also noted that, according to one of the writs, the author's husband had died as a result of torture inflicted in the BhairabNath Barracks. Mr. Nakarmi's name is also included on the National Human Rights Commission's list of conflict-related disappearances and the missing persons' database of the International Committee of the Red Cross. In the light of the documentation submitted by the author, the Committee considered that the State party had not provided sufficient and concrete explanations to refute the author's allegations regarding her husband's enforced disappearance. The Committee recalled that, in cases of enforced disappearance, the deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, denies the person the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. In the instant case, the State party had produced no evidence to show that it met its obligations to protect the life of Mr.Nakarmi. Accordingly, the Committee concluded that the State party failed in its duty to protect Mr.Nakarmi's life, in violation of article 6 (1) of the Covenant. A similar conclusion was reached in case No. 2185/2012 (*Dakhal v. Nepal*)

41. In case No. 2206/2012 (*Lale and Popović v. Bosnia and Herzegovina*), the Committee noted the authors' claim that, at the time they filed their communication, 20 years after the disappearance of their mothers, and seven years after the decision of the Constitutional Court of 13 July 2005 in which the Court acknowledged the absence of effective local remedies, the authorities had not provided them with any relevant information regarding the investigation into the disappearances of their mothers. On 6 February 2006, the authors applied to the Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 13 July 2005. On 27 May 2006, the Court found that all available information had been released to the authors but that its decision had not been fully enforced as the authorities had failed to establish certain institutions in accordance with the Law on Missing Persons. The State party provided to the Committee general information about its efforts to ascertain the fate and whereabouts of missing persons and to prosecute perpetrators. Nevertheless, it had failed to provide the authors or the Committee with specific and relevant information concerning Mrs. Lale's and Mrs. Popović's case and the steps taken to establish their fate and whereabouts. The Committee concluded that the facts before it revealed a violation of article 6 read in conjunction with 2(3), of the Covenant with regard to Mrs. Lale and Mrs. Popović.

3. Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Covenant, art. 7)

42. The Committee found violations of this provision in a high number of communications, such as cases Nos. 2128/2012 (*Kerrouche v. Algeria*), 2146/2012 (*Suleimenov v. Kazakhstan*), 2157/2012 (*Belamrania v. Algeria*), 2219/2012 (*Nasyrlayev v. Turkmenistan*), 2220/2012 (*Aminov v. Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*), 2226/2012 (*Uchetov v. Turkmenistan*), 2227/2012 (*Yegendurdyyew v.*

Turkmenistan), 2359/2014 (*Saidarov et al v. Kyrgyzstan*) and 2586/2015 (*Zakharenko v. Belarus*).

43. In case No. 2425/2014 (*Whelan v. Ireland*), where the author claimed to have been victim of violation of her rights under the Covenant as a result of the legal prohibition of abortion in Ireland, the Committee held that the fact that a particular conduct or action is legal under domestic law does not mean that it cannot infringe article 7 of the Covenant. The Committee considered it well-established that the author was in a highly vulnerable position after learning that her much-wanted pregnancy was not viable. As documented in the psychological reports submitted to the Committee, her physical and mental situation was exacerbated by the following circumstances arising from the prevailing legislative framework in Ireland and by the author's treatment by some of her health care providers in Ireland: being unable to continue receiving medical care and health insurance coverage for her treatment from the Irish health care system; feeling abandoned by the Irish health care system and having to gather information on her medical options alone; being forced to choose between continuing her non-viable pregnancy or traveling to another country while carrying a dying fetus, at personal expense and separated from the support of her family; suffering the shame and stigma associated with the criminalization of abortion of a fatally-ill fetus; having to leave the baby's remains in a foreign country; and failing to receive necessary and appropriate bereavement counseling in Ireland. Much of the suffering the author endured could have been mitigated if she had been allowed to terminate her pregnancy in the familiar environment of her own country and under the care of health professionals whom she knew and trusted; and if she had received necessary health benefits that were available in Ireland, which she would have enjoyed had she continued her non-viable pregnancy to deliver a stillborn child in Ireland.

44. The Committee considered that the author's suffering was further aggravated by the obstacles she faced in receiving information she needed about appropriate medical options from her known and trusted medical providers. The Committee noted that the Abortion Information Act legally restricts the circumstances in which any individual may provide information about lawfully available abortion services in Ireland or overseas, and criminalizes advocating or promoting the termination of pregnancy. The Committee further noted the author's unrefuted statements that the health professionals in Ireland did not provide her with clear and detailed information on how to terminate her pregnancy in another jurisdiction or from which other health care providers she could obtain such information, thereby disrupting the provision of medical care and advice that she needed and exacerbating her distress.

45. The Committee considered that, taken together, the facts described established a high level of mental anguish that was caused to the author by a combination of acts and omissions attributable to the State party, which violated the prohibition against cruel, inhuman or degrading treatment found in article 7 of the Covenant. The Committee also noted in this regard, as stated in General Comment No. 20, that the text of article 7 may not be limited, and no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reason. Accordingly, it could not accept as a justification or extenuating circumstances the State party's explanations concerning the balance between moral and political considerations that underlies the legal framework existing in Ireland.

46. In case No. 2106/2011 (*Kashtanova and Slukina v. Uzbekistan*), the Committee noted the authors' claims that during the pre-trial investigation the investigating officer tortured the alleged victims (14 and 15 years old at the time), in order to force them to make confessions; that they were repeatedly beaten, refused food, not given warm clothing; that while in pre-trial detention their families were allowed to visit them only once, after the preliminary investigation had been already concluded; that during the visit they found that the boys were still wearing summer clothes, while the temperatures in the streets were -15

degrees and the cells were not heated; and that during an interrogation the investigating officer broke the leg of one of them and refused to provide medical assistance. The Committee further noted that the alleged victims had complained regarding the above treatment to various authorities, including the Prosecutor's Office and the Supreme Court. The State party did not refute these allegations, but merely provided information regarding the criminal charges and the verdict against the alleged victims. The Committee recalled that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. The Committee further recalled that the State party is responsible for the security of all persons held in detention and that, when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations. In the absence of any explanation from the State party, the Committee has to give due weight to the authors' allegations. Accordingly, the Committee concluded that the facts disclosed violations of articles 7 and 10(1) of the Covenant.

47. In case No. 2245/2013 (*Purna v. Nepal*), the Committee noted the author's allegations that, while she was held in military barracks, she was subjected to gang rape and other forms of torture by members of the Royal Nepalese Army, in order to extract information about her husband's alleged support to the Maoists, to punish and intimidate her and others in the community, and to humiliate and degrade her. The State party did not contest these allegations, but merely stated that they were not supported by any evidence. The Committee recalled that the burden of proof cannot rest on the author of the communication alone, especially since the author and the State party do not always have equal access to the evidence and it is frequently the case that the State party alone has the relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it. In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations as substantiated in the absence of satisfactory evidence or explanations to the contrary by the State party. In the light of the author's detailed and consistent description of the gang rape and other acts of torture endured, which were corroborated by medical and psychological reports provided by her and coinciding with the general pattern of violations committed by Nepalese security forces during the internal conflict as documented in various intergovernmental and non-governmental reports — including, in particular, sexual violence against women suspected of being Maoists or Maoist supporters, in the context of interrogations — and in the absence of any explanation from the State party in this respect, due weight had to be given to the author's allegations. The Committee also noted the State party's failure to initiate any investigations into the author's allegations of torture, despite the numerous avenues she pursued. The Committee concluded that the gang rape and other acts of torture inflicted by the Army upon the author while in detention and the subsequent lack of investigation of her allegations, prosecution of those responsible and reparation to the victim violated the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant.

48. In case No. 2317/2013 (*Ortikov v. Uzbekistan*), the Committee took note of the author's allegation of torture in the police's pretrial detention facility No. 64/1 in Tashkent from February to August 2009; and the observations of the State party that, following a complaint from the author's brother dated 8 May 2009, the chief directorate for the enforcement of punishment carried out an investigation but did not find any proof of the allegations of ill-treatment. The Committee also noted that the medical documents submitted by the author suggested a number of injuries but did not specify their source and origin; that the State party did not provide specific details on the investigation carried out

by the chief directorate for the enforcement of punishment; and that the State party did not provide to the Committee any documents supporting its statements on the health of the author upon his entry into prison and exit therefrom. The Committee additionally observed that the author was subject to an extended period of incommunicado detention (almost three months), a fact that the State party did not contest and which in itself can amount to a form of torture or cruel, inhuman and degrading treatment or punishment, especially when the length of the period of incommunicado detention has not been prescribed by a legal authority and is, in effect, indefinite. The Committee further noted that the author's family submitted at least 12 complaints about the author's treatment in detention to various State authorities, but no information was provided to the complainants about any investigative steps taken by the authorities in connection with the complaints. In the light of the above, and taking into account the specificity of the author's allegations about the multiple acts of torture he was subjected to, the failure of the State party to refute those allegations with proper documentary evidence, the specific context of the author's prolonged detention in the pretrial facility, and the State party's failure to carry out an effective investigation into the author's allegations of torture, the Committee found a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant. Violation of these provisions was also found in case No. 2187/2012 (*Bazarov v. Kyrgyzstan*), where, according to the material on file, no investigation was carried out in the torture allegations despite a number of incriminatory witness accounts.

49. In case No. 2412/2014 (*Samathanam v. Sri Lanka*), the Committee took note of the author's allegations that on 17 December 2007, the author was beaten by officials of the Terrorist Investigation Division; that the following morning the officer in charge of the detention facility warned him that the beatings would cease once he signed a confession; and that he was forced to witness acts of torture against other inmates. In July 2008, while being detained in the same Division facility in Colombo, he was pressured to confess to being a member of the international intelligence wing of LTTE; that the interrogators threatened to arrest his wife, rape her and kill his child if he refused to confess; that in August 2008, the interrogators told him that they would get a detention order against his wife; that against this background, he was forced to write a statement in which he stated that he had imported an illegal GPS device for LTTE; and that subsequently he was brought before a court and charged with illegally importing a GPS device and aiding and abetting LTTE. The Committee further noted the author's allegations that after he was taken to the detention facility in Colombo, he was not provided with medication for his diabetes until the first time he was visited by a representative of the High Commission of Canada; that owing to the lack of medication, he had to urinate very frequently but the guards did not always allow him to use the washroom and occasionally he had no choice but to urinate in the clothes he was wearing and to stay in those clothes. Likewise, at the Welikada prison, the guards refused to provide the author with his diabetes medication. He also experienced joint and chest pains, but was only taken to hospital after the High Commission sent a letter to the Superintendent of Prisons in Colombo on 2 March 2010. Although the hospital doctor indicated that the author needed to be admitted, he was returned to the prison, where he never received the medication prescribed. In the absence of a response from the State party in that regard, the Committee gave due weight to the author's claims and found a violation of his rights under articles 7 and 14 (3) (g) of the Covenant.

50. In case No. 2164/2012 (*Basnet v. Nepal*), the Committee took note of the author's allegations that the detention and subsequent enforced disappearance of her husband amounted per se to treatment contrary to article 7. The Committee recognized the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 on article 7, which recommends that States parties should make provision to ban incommunicado detention. In the present case, in the absence of a satisfactory explanation from the State party, the Committee found that the enforced

disappearance of the author'shusband constituted a violation of article 7 of the Covenant. The Committee also noted the anguish and stress caused to the author by the disappearance of her husband, in particular, the fact that the author never received sufficient explanation concerning the circumstances surrounding the disappearance or alleged death, nor had she received his body remains. In the absence of a satisfactory explanation from the State party, the Committee considered that these facts revealed a violation of article 7 of the Covenant with respect to the author.

51. In case No. 2184/2012 (*Nakarmi v. Nepal*), the Committee took note of the author's allegations that the incommunicado detention since September 2003 and subsequent enforced disappearance of her husband amounted per se to treatment contrary to article 7; and that the reports of OHCHR-Nepal and the National Human Rights Commission also indicated that he was subjected to torture while in detention, which severely affected his health and presumably caused his death. The Committee recognized the degree of suffering involved in being held indefinitely without contact with the outside world. It recalled its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, which recommended that States parties should make provision to ban incommunicado detention. In the present case, in the absence of a satisfactory explanation from the State party, the Committee found that the enforced disappearance of the author's husband and the treatment given to him while in detention constituted a violation of article 7 of the Covenant. The Committee further took note of the anguish and distress caused to the author and her minor daughter by the disappearance and the lack of information on the circumstances surrounding it. No investigation had been carried out to ascertain Mr. Nakarmi's fate, and, in case of his death, to return his bodily remains to his family. The Committee considered that these facts revealed a violation of article 7 with respect to the author and her minor daughter. A similar conclusion was reached in cases Nos. 2185/2012 (*Dakhal v. Nepal*) and 2259/2013 (*Boathi v. Algeria*).

52. In case No. 2206/2012 (*Lale and Popović v. Bosnia and Herzegovina*), concerning the enforced disappearance of the authors' mothers, the Committee noted the authors' claims that their rights under articles 7, 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant had been violated. It also noted the anguish and distress caused to the authors by the continuing uncertainty resulting from not knowing where their mothers' remains may be and the impossibility, if they are deceased, of giving them a proper burial. It further noted that, although the authors provided DNA samples to the authorities in 2003 in order to facilitate the identification of the mortal remains of Mrs. Lale and Mrs. Popović, they had not received a response from the competent authorities. The Committee considered that these circumstances, together with the lack of information as to the fate and whereabouts of Mrs. Lale and Mrs. Popović, amounted to inhuman and degrading treatment in violation of article 7, read in conjunction with article 2(3), of the Covenant, with regard to the authors.

53. Claims of violations of article 7 were examined by the Committee in a number of cases concerning expulsion or extradition to countries where the authors alleged being at risk of suffering torture, including the following.

54. Case No. 2204/2012 (*J.D. v. Denmark*), concerned the deportation of the author, who alleged being a Falun Gong practitioner, to China. The Committee held that although the author disagreed with the factual conclusions of the State authorities on her asylum application, she had failed to demonstrate that the decision not to grant her asylum was clearly arbitrary or amounted to a denial of justice. The Committee therefore concluded that her removal to China did not violate her rights under articles 7 and 18 of the Covenant.

55. In case No. 2240/2013 (*M.A. v. Denmark*), concerning the deportation of the author to Afghanistan, the Committee considered that the author had not identified any irregularity in the decision-making process or any risk factor that the State party's authorities failed to

take properly into account. While the author disagreed with the factual conclusions of the State party's authorities, he had not shown that those conclusions were arbitrary or manifestly erroneous or that they amounted to a denial of justice. In these circumstances, and in the absence of any other pertinent information on file, while not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee could not conclude that the information before it showed that the author faced a personal and real risk of treatment contrary to articles 6 (1) or 7 of the Covenant when he was removed to Afghanistan.

56. In case No. 2291/2013 (*A and B v. Denmark*), concerning the deportation of the authors to Pakistan, they claimed that they would face ill-treatment or death if they were removed due to threats they received because they are Ahmadis; and that the government authorities in Pakistan would not be able to shield them from persecution, as the Ahmadi religion is criminalized under domestic law. The Committee took note that the State party's authorities, after examining the evidence provided by the authors in their asylum application, including interviews and oral hearings, found that the authors had not shown that they would be at a personal risk of harm upon return to Pakistan. The Committee further took note of the Refugee Appeals Board's findings that while Ahmadis in Pakistan are often subjected to threats and harassment by other groups, both authors stated during domestic proceedings that no one had verbally threatened them or approached them face-to-face. The authors indicated in their asylum application and communication that they were the target of three incidents in three areas outside of Lahore, but they did not provide further details on this either to the Committee or the Danish authorities. While the authors allege that one of their sons had to flee Pakistan, this assertion was not presented before the domestic authorities, and the authors did not provide further information on the circumstances surrounding their son's departure. Finally, the Committee considered that the authors had not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. While the authors disagreed with the factual conclusions of the State party's authorities, they had not shown that these conclusions were arbitrary or manifestly erroneous, or amounted to a denial of justice. In the light of the above, the Committee could not conclude that the information before it showed that the authors would face a personal and real risk of treatment contrary to articles 6(1) or 7 of the Covenant if they were removed to Pakistan.

57. In case No. 2387/2014 (*A.B. v. Canada*), concerning the deportation of the author to Somalia, the Committee, while noting the author's assertions about his family profile, killing of his relatives, the absence of clan protection, his Western identity and appearance, his lack of local knowledge, experience and support networks in Somalia, it observed that the author's claims were thoroughly examined by the State party's authorities in the context of his pre-removal risk assessment application and the danger opinion issued by the Minister's delegate on 15 June 2012. The Minister's delegate found that the general human rights abuses and poor country conditions were not sufficient to establish that the author would be personally at risk if returned to Somalia. She also found that the author posed a danger to the Canadian public owing to "serious criminality".The Committee noted that, although the author contested the assessment and finding of the Minister's delegate as to the risk of harm he faced in Somalia, he had not presented any new evidence to substantiate his allegations under articles 6 and 7. The Committee considered that the information available demonstrated that the State party took into account all the elements available to evaluate the risk faced by the author, and that the author had not identified any irregularity in the decision-making process. The Committee also considered that, while the author disagreed with the factual conclusions of the State party's authorities, he had not shown that they were arbitrary or manifestly erroneous, or amounted to a denial of justice. In view thereof, the Committee was not able to conclude that the information before it showed that

the author's rights under articles 6 (1) and 7 of the Covenant would be violated if he were removed to Somalia.

58. In case No. 2613/2015 (*Monge Contreras v. Canada*), concerning the deportation of the author to El Salvador, the Committee noted that, throughout the asylum procedure, the State party did not accord weight to various aspects of the information provided by the author, including: (a) the affidavit of an expert on gang violence in Central America, which concluded that the author would be "at extraordinarily high risk of egregious physical harm and death if returned" and that El Salvador would be unable to provide him with due protection; (b) the statement of the Salvadoran policeman responsible for protecting the author's family that the State did not have the capacity to provide him and his family with the protection they need; (c) the submission that the author's wife had been told by the MS-13 gang that the only reason that her daughters and herself were alive was because they knew that one day the author would return to them; and (d) the medical certificate, according to which the author suffered from chronic post-traumatic stress disorder and that he would be highly vulnerable to psychological collapse in case of return to El Salvador.

59. Moreover, while noting the State party's argument that reports indicated that gang violence mainly affected small family business, public transportation services and vulnerable groups, such as women and children, and that the author did not fall into any of those categories, the Committee also noted that the State party did not give adequate weight to other elements contained in the reports provided by the author in support of his pre-removal risk assessment application, according to which violence from gangs particularly affects victims and witnesses of crimes and that El Salvador would be unable to provide due protection to them. The Committee further noted that, taking into account the profile of the author, this information was of particular relevance. In that regard, the Committee noted the numerous continuing public reports available regarding the extent of gang violence in El Salvador in general and against witnesses in particular. It noted the State party's argument that El Salvador had recently taken measures to eliminate gang violence, but that the impact of those measures remained unknown and that gang-related violence persists. In the light of the above, the Committee considered that, when assessing the risk faced by the author, the State party failed to adequately take into account the totality of the available information and its cumulative effect, according to which the author would be at real risk of irreparable harm if removed to El Salvador. In such circumstances, it considered that the author's removal would violate articles 6 and 7 of the Covenant.

60. In case No. 2443/2014 (*S.Z. v. Denmark*), the Committee had to decide whether the author's removal to the Russian Federation would constitute a violation of her rights under article 7 of the Covenant. The Committee noted that the Danish Refugee Appeals Board rejected the author's asylum request considering that the author had failed to substantiate her claim that she would be at risk of persecution or torture upon return due to her Chechen origin and the fact that her son was officially considered a rebel. The Committee noted that in examining the author's asylum request, the Danish Refugee Appeals Board reviewed the author's allegations making a specific and individual risk assessment, taking into due consideration reports that provided information concerning the situation of Chechens in the Russian Federation. The Committee also noted, inter alia, that the author had not been politically active herself but appeared as a very low-profile individual; she had no connections with the Chechen rebels, according to the information submitted by her; and that the Board could not attach an evidentiary importance to the documents provided by the author, because based on their contents and the time of their submission, and being undated, they appeared fabricated for the occasion. Based on the material on file the Committee considered that the facts before it did not permit to conclude that the assessment of evidence and factual conclusions reached by the Board were manifestly unreasonable or arbitrary. Accordingly, the Committee could not conclude that the information before it

showed that the author would face a personal and real risk of treatment contrary to article 7 of the Covenant if she were removed to the Russian Federation.

61. In case No. 2462/2014 (*M.K.H. v. Denmark*), the Committee examined the author's claim that his deportation to Bangladesh would expose him to a risk of torture and persecution due to his homosexuality. The Committee noted that the Danish authorities had found the author's homosexuality suspicious, and hence did not take into account his allegations that: (a) he and his partner were tortured and expelled from their village upon discovery of their homosexual relationship; (b) he was told that he would be killed if he tried to come back to the village and his family; (c) his partner was tortured and consequently died when he tried to return to their village for a visit; and (d) no protection could be expected from the national authorities against this form of repression of homosexuality, which is widely practiced in Bangladesh. In the same way, the State party did not take into account the information provided by the author according to which homosexuality is stigmatized in Bangladesh and remains criminalized by section 377 of the Criminal Code, which in itself constitutes an obstacle to the investigation and sanction of acts of persecution against LGBTI persons. In addition, the Committee noted that the author was Muslim, and that LGBTI people in Bangladesh remain frequently victims of threats of violence, particularly after homophobic public comments by Islamic leaders. In view of the above, the Committee considered that, when assessing the risk faced by the author,the State party failed to take adequately into account his version of the events he faced in Bangladesh, the documents he provided, and the available background information about the risks faced by LGBTI people in Bangladesh, thereby arbitrarily dismissing the author's claims. In such circumstances, the Committee considered that the author's deportation to Bangladesh would amount to a violation of article 7 of the Covenant.

62. In case No. 2464/2014 (*A.A.S. v. Denmark*), the author claimed to have a well-founded fear of being subjected to torture and to inhuman or degrading treatment in the event of his return to Somalia. In the light of the information provided by the author, the information presently available to the Committee and the record of human rights violations in Somalia, the Committee considered that the State party's immigration authorities had not given sufficient weight to the cumulative effect of the author's individual circumstances, which made him particularly vulnerable, in assessing the risk of him being subjected to treatment contrary to article 7 of the Covenant, in case of his forcible return to Somalia. In the Committee's view, the author's situation was distinguishable from that of the other Somali nationals, who sought asylum abroad on the ground of the general situation in Somalia, since he left the country of origin at the age of five and did not have any remaining family or social network in Somalia, had limited literacy skills in the Somali language, belonged to a minority clan and had suffered from tuberculosis in the recent past. In these circumstances, the Committee was of the view that the author's removal to Somalia, in the absence of further consideration of his case in light of the cumulative effect of the aforementioned individual circumstances, would put him at a real risk of irreparable harm such as that contemplated in article 7 of the Covenant, especially given the fact that his brother had already been granted protection status by the State party's immigration authorities.

63. In case No. 2469/2014 (*E.U.R. v. Denmark*), the author claimed that as a result of his work as an interpreter for the US forces in Afghanistan between 2009 and 2011, including the Intelligence Services, and because of a related conflict with a powerful individual affiliated with the Taliban, he faced a real and personal risk to be subjected to a violation of his rights under article 7 of the Covenant, if forcibly returned to Afghanistan. The Committee took note of the author's claim that due to his past work, he belonged to a risk group under the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, which was not contested by the State party. The author also claimed that his brother-in-law was killed by individuals who were

searching him, a claim which was dismissed by the Refugees Appeal Board as insufficiently substantiated. The Committee however noted that neither the Danish Immigration Service, nor the Refugee Appeals Board initiated any investigation as to the veracity and validity of the evidence produced in support of his allegations, aside from rejecting a police report produced by the author as a result of his reporting of the crime to the Afghan police authorities. In the circumstances of this case, and reiterating that the RAB based its decision to reject the author's asylum claim merely on inconsistencies that were not central to the general claim made by the author as a former interpreter for the US forces in Afghanistan, the Committee concluded that the material before it suggested that insufficient weight was given to the author' allegations, and that, notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the State party had not adequately addressed the author's personal circumstances, which should have been devoted further analysis. Accordingly, the Committee concluded that the author's removal to Afghanistan would constitute a breach by the State party of its obligations under article 7 of the Covenant.

64. In case No. 2493/2014 (*A.H.A. v. Denmark*), the author claimed that if returned to Somalia, hewould risk being subjected to ill-treatment by Al-Shabaab, as a member to a minority clan that had always been "supressed".The Committee indicated that he was aware of the existence of concerns regarding the Al-Shabaab's continuing presence in Southern and Central Somalia. However, the Committee noted that in examining the author's asylum request, the Refugees Appeal Board reviewed the author's allegations making a specific and individual risk assessment, also taking into due consideration the information concerning the situation in the Qoryooley area. In addition, the Committee noted that the author challenged the assessment of evidence and factual conclusions reached by the Board, without however adducing any element which would permit to demonstrate that they are manifestly unreasonable or arbitrary. In the light of the foregoing, the Committee could not conclude that the information before it showed that there were substantial grounds for believing that there was a real risk of irreparable harm to the author. The Committee thus concluded that the author's removal to Somalia would not violate his rights under article 7 of the Covenant.

65. In case No. 2593/2015 (*M.Z.B.M. v. Denmark*), concerning the deportation of a transgender woman to Malaysia, the author claimed that, if returned to Malaysia, she would face the risk of being submitted to sexual violence by the Malaysian police based on her gender identity, in violation of her rights under articles 7, in conjunction with 17(1) and 26 of the Covenant. She stated, inter alia, that her appearance, given her dressing in women's clothes and following her gender reassignment surgery and hormonal treatment, did not correspond with her identity documents, for which she had been detained on several occasions, submitted to sexual abuse by the Malaysian police and charged with a criminal offence under the sharia law of the State of Melaka, which could entail a fine or imprisonment of up to six months. The Committee noted that the State party had acknowledged the author's change of gender and the fact that she may have been detained in the past. However, both the Danish Immigration Service and the Refugee Appeals Board thoroughly examined the author's claims and evidence presented, but found the allegations of detention and, in particular, sexual abuse to be poorly substantiated and inconsistent on several grounds, including the number, time and location of the alleged incidents and the number of perpetrators. In this regard, the Committee noted that the author described those incidents in a generic manner in her communication. Regarding the alleged criminal proceedings against the author under sharia law and the threats of imprisonment made in 2012 as a result, the Board also reviewed the sharia court documents presented by the author but noted that the charges against her had not been pursued since April 2012; and that between that date and her final departure in January 2014, the author had frequently travelled abroad without ever experiencing any difficulties, and had not been detained or

otherwise harassed during that time. The Committee also noted that the author had failed to identify any irregularity in the decision-making process or any risk factor that the State party's authorities failed to take properly into account. While the author had challenged the factual conclusion reached by the Danish immigration authorities, she had not explained how the proceedings before these authorities were arbitrary or otherwise amounted to a denial of justice. In the light of the foregoing, the Committee could not conclude that the removal of the author to Malaysia would constitute a violation of her rights under article 7, read in conjunction with articles 17 (1) and 26, of the Covenant.

66. In case No. 2378/2014 (*A.S.M. and R.A.H. v. Denmark*), concerning the deportation of the authors to Italy based on the Dublin Regulation principle of "first country of asylum" the Committee observed that the material before it, as well as information in the public domain, indicated that there is a lack of available places in the reception facilities for asylum seekers and returnees under the Dublin Regulations; that returnees, like the authors, who have already been granted a form of protection and benefited from the reception facilities when they were in Italy, are not entitled to accommodation in the CARAs; and that although beneficiaries of protection entitled to work and to social rights in Italy, its social system is in general insufficient to attend all persons in need, in particular in its current socio-economic situation. Despite it and the difficulties confronting the authors, the Committee considered that the mere fact that the authors, who were a couple, may fall within this situation by itself did not necessarily meant that they would be in a special situation of vulnerability –and in a situation significantly different to many other families- so as to conclude that their return to Italy would constitute a violation of the State party's obligations under 7 of the Covenant. The Committee observed that during their stay in Italy, the authors were given health insurance cards when they got asylum and had access to medical treatment, including for the birth of their two first children. Although they claimed that they had limited access to this service, they had failed to identify before the Committee specific circumstances in which the authors or their children were denied medical services when they needed. Likewise, Mr A.S.M. was able to obtain some jobs in Italy in the past, and had not convincingly explained why he would be unable to work again or to seek the Italian authorities' protection in case of abuses from employers. In light of the foregoing, the Committee considered that although the authors disagreed with the decision of the State party to return them to Italy, they had failed to explain why this decision was manifestly unreasonable or arbitrary in nature. Nor had they pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee could not conclude that their removal to Italy would constitute a violation of article 7 of the Covenant. The Committee, however, was confident that the State party would duly inform the Italian authorities of the authors' and their children's removal, in order for the authors and their children to be taken charge of, upon arrival, in a manner adapted to the age of the children and that the family would be kept together.

67. In case No. 2379/2014 (*Ahmed v. Denmark*), the Committee noted the author's claim that deporting her and her four daughters to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author based her arguments on, *inter alia*, the actual treatment she had received after she was granted residence permit in Italy, and on the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports.

68. The Committee noted that, according to the uncontested submissions by the author, she lived in a reception centre between March and July 2009, when she was granted subsidiary protection with a residence permit valid for three years, which was later renewed.When her residence permit was issued, the author was asked to leave the reception centre without being provided with alternative accommodation. Subsequently, she lived in the streets and railway stations and was dependent on food provided by churches. Feeling

desperate, she went to Finland. However, she was returned back to Italy in May 2010 and became homeless again, as she did not receive any assistance with employment or housing. When the author's four daughters arrived to Italy, on 12 August 2013, they all stayed in Italy for five days receiving food from churches. Fearing destitution and homelessness, and in the absence of a prospect in finding a humanitarian solution to their situation in Italy, the author together with daughters went to Denmark and requested asylum in August 2013.

69. The Committee noted the various reports submitted by the author highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulations. The Committee noted in particular the author's submission that returnees, like herself, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, were no longer entitled to accommodation in those facilities (CARAs). The Committee noted the finding of the Refugee Appeals Board that Italy should be considered the "first country of asylum" in the present case, and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country. The Committee further noted the reference made by the State party to a decision of the European Court of Human Rights according to which, although the situation in Italy had shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers. However, the Committee considered that the State party's conclusion did not adequately take into account the information provided by the author, based on her own personal experience that, despite being granted residence in Italy, she faced intolerable living conditions there. In this connection, the Committee noted that the State party did not explain how, in case of return to Italy,the renewable residence permit would actually protect the author and her four children from exceptional hardship and destitution.

70. The Committee recalled that States parties should give sufficient weight to the real and personal risk a person might face if deported, and considered that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author and her daughters would face in Italy, rather than rely on general reports and on the assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today. The Committee considered that the State party failed to take into due consideration the special vulnerability of the author who, notwithstanding her entitlement to subsidiary protection, faced homelessness and was not able to provide for herself in the absence of any assistance from the Italian authorities. The State party had also failed to seek proper assurances from the Italian authorities that the author and her children, i.e. in a particularly vulnerable situation, would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake (a) to renew the author's residents permit, issue residents permits to her children and not to deport them from Italy; and (b) to receive the author and her children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy. Consequently, the Committee considered that the removal of the author and her four children to Italy in these particular circumstances would amount to a violation of article 7 of the Covenant.

71. In case No 2512/2014 (*Rezaifar et al. v. Denmark*), concerning equally the deportation of the authors to Italy as the first country of asylum, the Committee considered that the State party failed to take due consideration of the special vulnerability of the author and her children. Notwithstanding her formal entitlement to subsidiary protection in Italy, the author, who had been severely mistreated by her spouse, faced great poverty, and was not able to provide for herself and her children, including for their medical needs, in the absence of any assistance from the Italian authorities. The State party had also failed to seek effective assurances from the Italian authorities that the author and her two children,

who were in a particularly vulnerable situation analogous to that encountered by the author in *Jasin and others v. Denmark* (which also involved the deportation of an unhealthy single mother with minor children, who had already experienced extreme hardship and destitution in Italy), would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant. In particular, the State party failed to request Italy to undertake: (a) to renew the author's residence permit, and to issue permits to her children; and (b) to receive the author and her children in conditions appropriate to the children's age and the family's vulnerable status, which would enable them to remain in Italy. Consequently, the Committee considered that the removal of the author and her two children to Italy in these particular circumstances, and without the aforementioned assurances, would amount to a violation of article 7 of the Covenant. A similar conclusion was reached in case No. 2681/2015 (*Y.A.A. and F.H.M v. Denmark*).

72. Case No. 2608/2015 (*R.A.A. and Z.M. v. Denmark*), concerned the deportation of the authors to Bulgaria based on the Dublin Regulation principle of "first country of asylum". The Committee noted the finding of the Refugee Appeals Board that Bulgaria should be considered the country of first asylum and the position of the State party that the country of first asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide them with the same social and living standards as nationals of the country. The Committee further noted the reference made by the State party to a decision of the European Court of Human Rights, according to which the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of article 3 of the European Convention on Human Rights. The Committee considered, however, that the State party's conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Bulgaria, they faced intolerable living conditions there. In that connection, the Committee noted that the State party did not explain how, in case of a return to Bulgaria, the residence permits would protect them, in particular as regards access to the medical treatments that the male author needed, and from the hardship and destitution which they had already experienced in Bulgaria, and which would now also affect their baby.

73. The Committee recalled that States parties should give sufficient weight to the real and personal risk a person might face if deported and considered that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their child would face in Bulgaria, rather than rely on general reports and on the assumption that as the authors had benefited from subsidiary protection in the past, they would, in principle, be entitled to the same level of protection today. The Committee considered that the State party failed to take into due consideration that the authors were mistreated by Bulgarian officers upon arrival; that the male author was the victim of an apparently racially motivated attack and was unable to file a complaint to the police, as he was not allowed access to the police station; and that he was denied medical care for his heart disease. The Committee also noted that the authors had a 1-year-old baby and considered that those circumstances put them in a particularly vulnerable situation that was not sufficiently taken into account by the Refugee Appeals Board, and that their deportation to Bulgaria would be a source of retraumatization for them. The Committee further noted that in the absence of any assistance from the national authorities when they were in Bulgaria, the authors were not able to provide for themselves, notwithstanding their entitlement to subsidiary and refugee protection. The Committee further noted that the State party failed to seek proper assurances from the Bulgarian authorities to ensure that the authors and their baby would be received in conditions compatible with their status as refugees and with the guarantees under article 7 of the Covenant, by requesting that

Bulgaria undertake (a) to receive the authors and their child in conditions adapted to the baby's age and the family's vulnerable status, enabling them to remain in Bulgaria; (b) to issue a residence permit to the authors' baby; and (c) to take the necessary measures to ensure that the male author receives the medical treatment that he needs. Consequently, the Committee considers that, in these particular circumstances, the removal of the authors and their child to Bulgaria, without proper assurances, would amount to a violation of article 7 of the Covenant.

74. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party was requested to proceed to a review of the authors' claim, taking into account the State party's obligations under the Covenant, the Committee's present Views and the need to obtain assurances from Bulgaria, as set out above. The State party was also requested to refrain from expelling the authors and their baby to Bulgaria while their request for asylum was being reconsidered.

75. In case No. 2569/2015 (*B.M.I. and N.A.K. v. Denmark*), the Committee noted the authors' claim that deporting them and their two minor children to Bulgaria as the "first country of asylum", would expose them to treatment contrary to article 7 of the Covenant. The Committee noted that the authors based their arguments on, *inter alia*, the socio-economic situation they would face, including the lack of access to financial help or social assistance and to integration programs for refugees and asylum seekers, as demonstrated by their experience as asylum-seekers and after they received refugee status and a residence permit, as well as by the general conditions of reception for asylum seekers and refugees in Bulgaria. The Committee observed that the material before it, as well as general information in the public domain on the situation of refugees and asylum-seekers indicated that there may be a lack of available places in the reception facilities for asylum seekers and returnees, and that they are often in poor sanitary conditions. According to these reports, returnees like the authors who had already been granted a form of protection and benefited from the reception facilities when they were in Bulgaria, were not entitled to accommodation in the asylum camps beyond the six-month period from granting a protection status. Although beneficiaries of protection are entitled to work and enjoy social rights in Bulgaria, its social system is in general insufficient to attend all persons in need. The Committee however noted that the authors were not homeless before their departure from Bulgaria, and did not live in destitution. According to their statements before the Refugee Appeals Board, they had access to medical treatment during their stay in Bulgaria. Likewise, the authors had not provided any information that would explain why they would not be able to find a job in Bulgaria or to seek the protection of the Bulgarian authorities in case of unemployment. In this context, the Committee noted that the authors did not substantiate that they would face a real and personal risk of inhuman or degrading treatment in case of return to Bulgaria. Accordingly, the Committee considered that the mere fact that the authors may be possibly confronted with difficulties upon their return to Bulgaria did not in itself meant that they would be in a special situation of vulnerability – and in a situation significantly different to many other families.

76. The Committee further considered that although the authors disagreed with the decision of the State party's authorities to return them to Bulgaria as their country of first asylum, they had failed to explain why this decision was manifestly unreasonable or arbitrary. Nor had they pointed out any procedural irregularities in the procedures before the Danish immigration authorities. Accordingly, the Committee could not conclude that the removal of the authors to Bulgaria would constitute a violation of article 7 of the Covenant. The Committee, however, was confident that the State party would duly inform the Bulgarian authorities of the authors' removal, in order for the authors and their children to be kept together and taken charge of in a manner adapted to their needs, especially taking into account the age of the children.

4. Liberty and security of person (Covenant, art. 9)

77. In case No. 2245/2013 (*Purna v. Nepal*), the Committee noted the author's claims that she was continuously threatened and harassed by members of the Royal Nepalese Army and detained by a large military contingent without a warrant and without being informed of any charges against her; that she was detained in the military barracks for several hours and later released; and that she was never compensated for that detention despite the numerous avenues that she pursued in that regard. The State party signalled the lack of records of the author's detention but did not provide any explanations to the contrary nor conducted the necessary investigations into the author's allegations. The Committee was of the view that the author presented a credible case as to her detention, and requiring victims of arbitrary and illegal detention to provide records thereof would amount to a *probatio diabolica*. It considered that the burden of proof to rebut the author's evidence clearly lieds with the State party. Therefore, the Committee considered that the author's detention by members of the Royal Nepalese Army in the context of the internal conflict, and the State party's failure to provide her with compensation constituted a violation of her rights under article 9 of the Covenant.

78. In case No. 2317/2013 (*Ortikov v. Uzbekistan*), the Committee noted the author's allegation that he was kept in a police pretrial detention facility from 8 February 2009 to 7 September 2009, while under article 54 of the criminal implementation code of Uzbekistan a convicted person must be transferred from a pretrial detention facility to a prison at the latest 10 days after the final sentence of the court has been received by the detention facility. Having received no clarification on this claim from the State party, the Committee concluded that the author's detention was not in accordance with the procedure as established by law. The Committee therefore found a violation of the author's rights under article 9 (1) of the Covenant.

79. In case No. 2412/2014 (*Samathanam v. Sri Lanka*), the Committee noted the author's allegations that on 14 September 2007, the officers of the Terrorist Investigation Division did not inform him of the reasons for his arrest; that he was not detained on lawful grounds; that he was not given the opportunity to challenge the lawfulness of his detention; that he was only brought before a judge after one year of being detained; and that during that period he was held in detention without charge. In the absence of a response from the State party in that regard, the Committee considered that the State party had violated the author's rights under article 9 of the Covenant.

80. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the Committee took note of the author's claim that the prosecutor failed to execute the order for his placement under house arrest, which was issued on 15 April 2013 by the Supreme Court and subsequently renewed while he was in pretrial detention. Given that the facts and observations concerning the prosecutor's reasons for not having complied with the Court's order were not disputed, the Committee considered that the author's pretrial detention in prison beyond the date of the Supreme Court's order was a breach of internal law and constituted a violation of article 9 (1) of the Covenant.

81. In case No. 2481/2014 (*Scarano v. Venezuela*), concerning the imprisonment of a mayor for contempt of court, the Committee recalled that any deprivation of liberty, whether as a consequence of a criminal offence or an offence of another type, should be established by law and should be based on statutory procedures; and that the imposition of a draconian penalty of imprisonment for contempt of court without adequate explanation and without independent procedural safeguards was arbitrary. The Committee considered that there were insufficient legal grounds for sentencing the author to 10 months and 15 days' imprisonment and for removing him from the office of mayor, and that the State party had not demonstrated that the measure was a reasonable, necessary or proportional means of

achieving the alleged objective. Accordingly, the Committee found that the author's detention was arbitrary within the meaning of article 9 (1) of the Covenant.

82. In cases Nos. 2164/2012 (*Basnet v. Nepal*) and 2184/2012 (*Nakarmi v. Nepal*), concerning the enforced disappearance of the alleged victims, the Committee took note of the authors' allegations that their husbands were detained without an arrest warrant, that they were never brought before a judge or any other official authorized by law to exercise judicial power and that they could not take proceedings before a court to challenge the lawfulness of the detentions. In the absence of State party's responses in this regard, the Committee considered that the detention of the authors' husbands constituted a violation of their rights under article 9 of the Covenant. A similar conclusion was reached in cases Nos. 2185/2012 (*Dakhal v. Nepal*) and 2259/2013 (*Boathi v. Algeria*).

5. Right to be brought promptly before a judge (Covenant, art. 9, para. 3)

83. In case No. 2107/2011 (*Berezhnoy v. Russian Federation*), the Committee recalled that, in accordance with article 9(3), any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Committee also recalled that while the exact meaning of "promptly" may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles. The Committee noted the author's unchallenged allegations that he was apprehended on 16 February, was officially placed in pretrial detention by the decision of a prosecutor on 18 February 1995 and was never brought before a judge before the start of the court trial, many months later. The Committee recalled its general comment No. 35, that it is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with, and that a public prosecutor cannot be considered as an officer authorized to exercise judicial power within the meaning of article 9(3). Accordingly, the Committee concluded that the facts revealed a violation of the author's rights under article 9(3).

6. Right to take proceedings before a court regarding the lawfulness of detention (Covenant, art. 9 (4))

84. In case No. 2107/2011 (*Berezhnoy v. Russian Federation*), the Committee noted the author's unrefuted claims that he was unlawfully detained from 18 May 1995 until the beginning of his court hearings, on 5 March 1996; and that the State party did not provide any information regarding the author's whereabouts during this time. The Committee's longstanding jurisprudence prescribes that the detained person is entitled to take proceedings before the court to be able to challenge the lawfulness of his detention. If there is no lawful basis for continuing the detention, the judge must order release. In this particular case, the author was never brought before a judge to issue the initial restraint measure and was never allowed to take any proceedings to challenge his detention, in direct violation of the requirements of article 9(4), of the Covenant.

7. Right to compensation for unlawful arrest or detention (Covenant, art. 9(5))

85. In case No. 2388/2014 (*Kingue v. Cameroon*), the Committee noted that the author was arrested on 29 February 2008 without a warrant and was taken to prison where he was placed in solitary confinement and detained for longer than the maximum six days in custody permitted under article 119 (2) of the Code of Criminal Procedure of Cameroon. It was not until 19 March 2008 that a remand warrant was issued against him. Following his conviction at first-instanceand on appeal in connection with the offences of, inter alia,

aiding and abetting gang looting, the author filed an appeal in cassation before the Supreme Court. The Supreme Court annulled the previous judgments, as well as the judicial investigation proceedings and the remand warrant issued on 19 March 2008. The Committee also noted that, on 19 March 2008, while the author was still being held in the conditions described above, a second remand warrant was issued against him, this time in relation to a charge of misappropriation of funds, on which the author was later convicted and then acquitted on appeal. Lastly, a third case was brought against the author in June 2009, at the end of which he was convicted of misappropriation of public funds. The Supreme Court later annulled this ruling on the grounds of procedural irregularities, and on the same occasion, annulled the remand warrant issued against the author on 30 June 2009 on the grounds that the warrant had not been accompanied by an order specifying the reasons for its issue, of which the accused should have been notified. In the light of the above, the Committee could not fail to find a causal and temporal link between the three criminal cases brought against the author and considered that they could not be totally disassociated from each other for purposes of considering the author's complaints. The Committee observed that during the first period of the author's deprivation of liberty (from 29 February to 19 March 2008), his detention was unlawful because he was arrested without a warrant, placed in a solitary confinement cell and held incommunicado for 20 days; that two of the remand warrants issued against him in two different proceedings were declared null and void by the Supreme Court; and that two proceedings were annulled by the Supreme Court, while the third ended in his acquittal on appeal. Consequently, the arbitrary character of the author's arrest and detention, and his prolonged imprisonment on the basis of proceedings that were subsequently annulled by the Supreme Court or on the basis of charges that were annulled on appeal, supported the allegation that the author was targeted by the State authorities because of his activities as mayor. In these circumstances, the Committee considered that the author had been a victim of arbitrary and unlawful detention, within the meaning of article 9 (1) of the Covenant. The Committee also considered that, with reference to the author's deprivation of liberty from 29 February to 19 March 2008, the author's rights under article 9 (3) of the Covenant to be brought promptly before a judge and to be tried within a reasonable time had been violated. Accordingly, the Committee considered that, in accordance with article 9 (5) of the Covenant, the author was entitled to compensation. Since his efforts to obtain such compensation had been fruitless, the Committee considered that the author had suffered a violation of article 9 (5) of the Covenant.

8. Treatment during imprisonment (Covenant, art. 10)

86. In case No. 2146/2012 *(Suleimenov v. Kazakhstan*), the Committee noted that the State party is under an obligation to observe certain minimum standards of detention, which include the provision of medical care and treatment for sick prisoners, in accordance with rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It was apparent from the author's account that the pre-trial detention facilities, prisons and medical facilities where the author was held after his trial were not suited for a disabled person who is able to move only in a wheel-chair. The Committee further noted the author's claims that he was left alone in his cell without any meaningful activities, which caused numerous bedsores on his body. The author could not move independently and was not provided with continuous assistance even for his most basic needs. The Committee further noted that despite several examinations by the penitentiary medical specialists, he was not able to receive medical treatment adequate to his condition, that he continued suffering from lack of specialised medical care and medicine that he needed. On the basis of the information before it, the Committee found that confining the author in such conditions constituted a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant.

87. In case No. 2219/2012 (*Nasyrlayev v. Turkmenistan*), the author, who was convicted as a conscientious objector, claimed that he was placed in confinement in a bare concrete cell for repeated stays of several days, and that in the cells under general prison regime, the author endured harsh climatic conditions due to exposure to hot summer and cold winter. He also claimed that the prison was overcrowded and that prisoners infected with tuberculosis and skin diseases were kept together with healthy inmates, putting him at high risk of contracting tuberculosis. The Committee noted that the State party did not contest these allegations. The Committee recalled that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners. In the absence of any other pertinent information on file, the Committee decided that due weight had to be given to the author's allegations. Accordingly, the Committee found that confining the author in such conditions constituted a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant. A similar conclusion was reached in cases Nos. 2220/2012 (*Aminov v. Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*), 2226/2012 (*Uchetov v. Turkmenistan*) and 2227/2012 (*Yegendurdyyew v. Turkmenistan*).

88. In case No. 2317/2013 (*Ortikov v. Uzbekistan*), the Committee noted the author's claim concerning his prolonged incommunicado detention in pretrial detention facility No. 64/1 from 8 February 2009, that his lawyer was allowed to visit him for the first time on 4 May 2009 and that his wife saw him only on 8 October 2009, after his transfer to prison. The State party did not refute this claim, but argued that the author had refused to receive visits from his family. In view of its other findings in this case the Committee did not attribute much probative value to the reported refusal by the author to receive family visits. The Committee reiterated that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity; and that incommunicado detention is inconsistent with the obligation to treat detainees humanely and with respect for their dignity. In the light of this, the Committee found that holding the author in prolonged incommunicado detention, without access to the outside world, violated his rights under article 10 (1) of the Covenant.

89. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the author claimed that he was deprived of adequate medical care during his imprisonment. The Committee took note of the report of the Makala central prison hospital dated 17 July 2013, which prescribed hospitalization, consultation with an internist and a scan for a problem with the author's right shoulder. The author alleged that, despite his requests, the authorities took no action in response to this report; that during his hospitalization in December 2013 following his sudden collapse, he was forcibly returned to prison and that the authorities totally ignored the prescription for a brain scan that was issued to him by the Ngaliema Clinic. The State party did not respond to these allegations specifically but merely indicated that the author was granted transfers from one hospital to another. In the absence of detailed information from the State party contesting the alleged failure to follow the prescription set out in the medical reports and the author's forced departure from the hospital in December 2013, the Committee considered that the author's rights under article 10 (1) of the Covenant had been violated.

90. In case No. 2107/2011 (*Berezhnoy v. Russian Federation*), the Committee recalled its jurisprudence, as well as its general comment No. 17 on article 24 and its general comment 32 on the right to equality before courts and tribunals and to a fair trial, in that the accused juvenile persons are entitled to be brought as speedily as possible for adjudication. Article 10(2)(b), reinforces for juveniles the requirement in article 9 (3) that pre-trial detainees be brought to trial expeditiously. The Committee noted that the author was

arrested on 16 February 1995 and his case was adjudicated only on 25 March 1996; according to the State party, the criminal investigation was completed on 27 April 1995, almost one year before the final adjudication. In the absence of any pertinent explanation by the State party regarding this significant delay in the speedy adjudication of a case concerning a juvenile kept in custody, the Committee considered that the author's rights to a speedy trial under article 10 (2)(b) had been violated. Consequently to this finding and for the same reasons as stated above, the Committee found that the facts also disclosed a violation of the author's rights under article 14 (3) (c).

91. In case No. 2152/2012 (*S.P. v. Russian Federation*), the Committee noted the author's submission that while in the pre-trial detention centre he was kept together with individuals with previous convictions despite of the fact that at the time he had the status of accused. The Committee, however, noted the State party's explanation that upon arrival the author had requested from the administration that measures should be taken to ensure his safety because he was a former employee of the same detention centre and had committed a sexual crime against a minor; that based on that request the administration issued a ruling that he should be kept separately from the general population; and that subsequently he was placed in a cell with other former officers accused of committing crimes and with inmates who were considered to be under threat from the rest of the detainees. The Committee recalled that the State party is under the obligation to ensure segregation of accused persons from convicted ones, in order to ensure their status as unconvicted persons who enjoy the right to be presumed innocent as stated in article 14, paragraph 2, as well as rights guaranteed by article 10(2) of the Covenant. The Committee observed, however, that the State party is not required to segregate between the pre-trial detainees with and without previous convictions, unless it is necessary to ensure security and safety of the detainee or is necessary for the proper administration of justice. All detainees in pre-trial detention should equally enjoy the right to be presumed innocent regardless of the number of previous convictions. Accordingly, the Committee found that the fact the author was detained with detainees with previous convictions during his pre-trial detention in the circumstances of his case, did not constitute a violation of article 10(2)(a) of the Covenant.

92. The Committee also found violations of article 10 in cases Nos. 2412/2014 (*Samathanam v. Sri Lanka*) and, 2481/2014 (*Scarano v. Venezuela*).

9. Rights of aliens subjected to extradition proceedings (Covenant, art. 13)

93. In case No. 2118/2011 (*Saxena v. Canada*), the issue before the Committee was whether the consent by Canada, after the author was extradited to Thailand, to his prosecution for two offences on charges not listed in the original extradition request and surrender order, amounted to a violation of his rights under article 13 of the Covenant. The author claimed that following his return to Thailand, the Thai Attorney General's office sent a correspondence to the Canadian Ministry of Justice regarding other offences unrelated to those for which he had been extradited and requested a waiver of speciality in respect of other additional charges and was finally charged with several other charges that were not included in the waiver.

94. The Committee observed that the author availed himself of all procedural guarantees, as set out in article 13 of the Covenant, during his extradition proceedings in Canada; was extradited to Thailand in October 2009 and was in prison there when Canada consented to the waiver of specialty. While noting the State party's claim that the consent to waiver of specialty was granted in compliance with the bilateral 1911 Extradition Treaty in force, the Committee observed that this agreement enabled the prosecution of the author for criminal charges other than those for which he was extradited. The Committee noted that during the extradition proceedings the author raised concerns that he could be charged, prosecuted and tried for offences other than those for which he was surrendered, and the State party's judicial and administrative authorities provided him with assurances that the

specialty rule would be respected. The Committee further noted that, pursuant to article 13 of the Covenant, the competent extradition authority is a court, whereas in the particular circumstances of the present case the consent to waive the specialty rule was granted by the Ministry of Justice, without a judicial review, and in the absence of other due process guarantees.The Committee also noted the author's allegations that the Thai authorities signaled their intent to present additional criminal charges against the author prior to his actual surrender in October 2009, but waited to launch further criminal proceedings only after he was extradited, submitting a request for the waiver of specialty rule shortly after his arrival in Thailand. The State party did not provide any explanation as to why the charges for the latter offences were not made part of the initial or amended extradition order of 2003 and 2005, while the author had been detained and investigated since 1996.

95. The Committee noted that the State party did not deny that it would not have granted the waiver of specialty had it known that the author would be charged for other offences committed prior to issuing the extradition order which had not been covered by the surrender order. It also noted that the waiver was granted notwithstanding its repeated and emphatic assurances that there would be no breach of the specialty rule, i.e. that he would not be tried in Thailand for offences other than those for which he was extradited. The author was not given the opportunity to challenge the decision on granting consent to the waiver of specialty, thereby depriving him of the due process guarantees he was entitled to in compliance with article 13 of the Covenant, and that, as a consequence of the procedure, the author might have been exposed to a much longer detention and imprisonment. Furthermore, during the proceedings related to the request by Thailand for granting consent to a waiver of specialty, the author remained within the jurisdiction of Canada. The Committee thereby concluded that by depriving the author of the possibility to comment on the request to waive the specialty rule, and foreclosing the possibility for the author to seek a review of such request by the court, the State party violated his rights under article 13 of the Covenant.

10. Right to be tried by an independent and impartial tribunal (Covenant, art. 14 (1))

96. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the author claimed that the five-judge composition of the chamber that tried him in the Court of Cassation was not in conformity with the Act of 19 February 2013 on Court of Cassation Procedure and the Act of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Ordinary Courts, in accordance with which the chamber should have been composed of at least seven judges. The State party rejected these claims, pointing out that they were too insubstantial to amount to a violation of article 14. As to the author's claim concerning the composition of the Court of Cassation, the Committee noted that this issue was raised by the author's lawyers during the trial as an interlocutory incident and was declared to be unfounded by the Court without any reasons given. The Committee also noted that the State party provided no comment on this claim. In these circumstances, the Committee considered that there was sufficient legal basis for the author's claim and that the facts revealed a violation of the author's right under article 14 (1) to a fair and public hearing by a competent, independent and impartial tribunal established by law.

11. Right to adequate time and facilities for the preparation of one's defence (Covenant, art. 14(3)(b))

97. In case No. 2107/2011 (*Berezhnoy v. Russian Federation*), concerning the detention and trial of a juvenile, the Committee noted the author's claims that he had requested to see his mother while in detention, so that she could assist him with finding his own lawyer. The Committee also noted that the author's mother, who, given the author's age, could have been instrumental in finding a new lawyer, was only appointed as his legal representative very late, when the investigation was almost over. The Committee recalled that article 14

(3) (b), provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. Taking into consideration the age of the author and his vulnerability, the Committee considered that he had not been provided with adequate time and facilities for the preparation of his defence, and had not been able to communicate with counsel of his own choosing, in violation of his rights under article 14 (3) (b) of the Covenant.

98. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), the Committee took note of the author's allegations that, at the hearing at which his trial was concluded, the author suffered a choking fit and was physically unable to address the Court in order to challenge the prosecution's submissions; that the judge refused to allow him a short suspension in order to call his lawyers back into the courtroom; and that the proceedings were closed and the matter taken under advisement without the defence having been heard with regard to facts of fundamental importance. The Committee also noted that the State party had not submitted any observations in relation to this claim. The Committee considered that the Court should have given the author every opportunity to prepare his defence. The restrictions imposed by the Court in this regard therefore constituted a violation of article 14 (3) (b), inasmuch as the author did not benefit from adequate opportunities to prepare his defence or to communicate with his lawyers during the hearing.

99. The Committee also found a violation of this provision in case No. 2555/2015 (*Allabediev v. Uzbekistan*).

12. Right to defend himself in person or through legal assistance of his own choosing (Covenant, art. 14 (3) (d))

100. In case No. 2125/2011 (*Tyan v. Kazakhstan*), the Committee noted that the author had requested to be present in the appeal court hearings in person and that the court followed domestic law in rejecting his written request. The Committee also noted that the author was represented by four lawyers at that hearing and that at least two of these lawyers had represented him throughout the criminal proceedings against him. The Committee found that article 14 (3) (d) of the Covenant applies to the present case, since under the appeal proceedings the court examines the case as to the facts and the law and makes a new assessment of the issue of guilt or innocence. The Committee recalled that article 14 (3) (d) of the Covenant requires that accused persons are entitled to be present during their trial and that proceedings in the absence of the accused are only permissible if this is in the interest of the proper administration of justice or when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Accordingly, in the absence of adequate explanation by the State party, the Committee found that the facts before it disclosed a violation of article 14 (3) (d) of the Covenant.

101. In case No. 2496/2014 (*Kostin v. Russian Federation*), the Committee noted the author's allegation of a violation of his rights under article 14(3)(d) of the Covenant during the review in cassation of his verdict. The Committee found that article 14(3)(d) of the Covenant, which provides the accused with a right to be tried in his or her presence, applied to the present case, as the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence. The Committee recalled that under article 14 (3) (d) accused persons are entitled to be present during their trial and that proceedings in the absence of the accused may only be permissible if it is in the interest of the proper administration of justice, such as when accused persons decline to exercise their right to be present having been informed of the proceedings sufficiently in advance. The Committee noted that the author, who was tried for the serious crimes of murder and robbery, was neither present nor represented by a defence attorney during the cassation

court hearing. It further noted that the State party admitted that it made a mistake in the decision of the cassation court of 21 January 2014, as it was L, the other convicted in the case, who had participated in the cassation court hearing and not the author as indicated in the decision. The State party had failed to demonstrate that it had taken the steps necessary to inform the author of his rights to attend the proceedings in person and to be represented by a lawyer during the review in cassation of his verdict, especially since he was accused of serious crimes. In these circumstances, the Committee considered that the facts as presented revealed a violation of the author's rights under article 14 (3) (d) of the Covenant.

13. Right of the accused person to examine or have examined witnesses against him (Covenant, art. 14(3)(e))

102. In case No. 2555/2015 (*Allabediev v. Uzbekistan*), the Committee noted that the majority of the witnesses whose questioning was requested by the author and his counsel were not questioned at the hearings of Bekabad City Court and Tashkent Regional Court, and that the State party did not provide any reasons for not allowing those witnesses to be questioned. In these circumstances, the Committee concluded that the facts as submitted revealed a violation of the author's rights under article 14 (3) (e) of the Covenant.

14. Right not to be compelled to testify against oneself or to confess guilt (Covenant, art. 14 (3)(g))

103. In case No. 2187/2012 (*Bazarov v. Kyrgyzstan*), the Committee found that the author's rights under articles 9(1) and 14(3)(g) were violated considering, inter alia, the unrefuted fact that the author's forced confession was retained as evidence and used as a basis for his conviction.

104. In case No. 2125/2011 (*Tyan v. Kazakhstan*), the Committee noted the author's claim that the trial court had accepted his forced confessions as evidence. It also noted the statement of the State party that the evidence considered by the court was obtained in a lawful way and accepted by the court as admissible. In this regard, the Committee noted information on file indicating that the trial court had not considered the way the author's confessions were obtained by the police officers. There was nothing on file to suggest that the court had considered that, when the author wrote the confessions, he was under police control in a detention facility and that he retracted the confessions once he talked to his lawyers. In this light, the Committee concluded, that the author's rights under article 14 (1) and (3) (g) of the Covenant had been violated.

15. Rights of juvenile persons in criminal proceedings (Covenant, art. 14(4))

105. In case No.2107/2011 (*Berezhnoy v. Russian Federation*), the Committee stressed the importance of appropriate assistance to juveniles in criminal proceedings through their parents or legal guardians. Noting the State party's observation that the author's parents were informed "orally" at the time of the author's arrest, the Committee observed that the author's mother was appointed as his legal representative almost two months after that. The Committee considered that given the author's age as a factor of a vulnerable position, the unimpeded access by a parent/legal guardian or a representative could have played a crucial role in protecting the author's rights throughout the criminal proceedings. These include, but are not limited to, the author's right to counsel of his own choosing, his rights to a speedy trial, and his right to have adequate time and facilities for the preparation of his defence. Considering that the information provided by the parties showed that the State party failed to adopt any special measures to protect the author due to his age, the Committee found that the State party violated the author's rights under article 14(4), read in conjunction with article 24(1), of the Covenant.

16. Right to have one's conviction and sentence being reviewed by a higher tribunal (Covenant, art. 14 (5))

In case No. 2481/2014 (*Scarano v. Venezuela*), the Committee noted the author's claim that he was criminally prosecuted in first and only instance by the country's highest judicial body. The Committee recalled that where the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect. In view of the criminal nature of the sanctions imposed on the author, the Committee considered that, in the present case, the impossibility of a review of the author's conviction constituted a violation of article 14 (5) of the Covenant.

17. Right not to be tried or punished again for an offence for which a person has already been finally convicted or acquitted (Covenant, art. 14(7))

106. In case No. 2219/2012 (*Nasyrlayev v. Turkmenistan*), the Committee noted that, on 7 December 2009, the Dashoguz City Court convicted and sentenced the author to 24 months of imprisonment under article 219 (1) of the Criminal Code for his refusal to perform the compulsory military service, and that he was then again convicted by the same court under the same provision on 1 May 2012 and sentenced to 24 months of imprisonment. The Committee further noted the author's submission that article 18 (4) of the Law on Conscription and Military Service permits repeated call-up for military service and stipulates that a person refusing military service is exempt from further call-up only after he has received and served two criminal sentences. It notes in addition that these claims were not refuted by the State party.

107. The Committee recalled its general comment No. 32, wherein, inter alia, it stated that article 14 (7) of the Covenant provides that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted in accordance with the law and penal procedure of each country. Furthermore, repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience. The Committee noted that, in the present case, the author had been tried and punished twice with lengthy prison sentences under the same provision of the Criminal Code of Turkmenistan on account of the fact that, as a Jehovah's Witness, he objected to, and refused to perform, his compulsory military service. In the circumstances of the case, and in the absence of contrary information from the State party, the Committee concluded that the author's rights under article 14 (7) of the Covenant had been violated. A similar conclusion was reached in case No. 2220/2012 (*Aminov v. Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*) and 2225/2012 (*Nurjanov v. Turkmenistan*).

18. Right to recognition as a person before the law (Covenant, art. 16)

108. In cases concerning enforced disappearances, the Committee reiterated its established jurisprudence according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person as a person before the law, if the victim was in the hands of the State authorities when last seen, and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies, have been systematically impeded. In case No. 2164/2012 (*Basnet v. Nepal*), for instance, the Committee noted the author's allegations that her husband was arrested by policemen in her presence; that since then the State party had failed to provide her with relevant information concerning his fate and whereabouts; and that no effective investigation has been carried out to ascertain his whereabouts, maintaining him outside the protection of the law since then. The Committee, therefore, found that the enforced disappearance of the author's husband deprived him of the protection of the law and of his right to recognition as person before the law, in

violation of article 16 of the Covenant. A similar conclusion was reached in cases Nos. 2184/2012 (*Nakarmi v. Nepal*), 2185/2012 (*Dakhal v. Nepal*) and 2259/2013 (*Boathi v. Algeria*).

19. Right not to be subjected to interference with one's privacy, family and home (Covenant, art. 17)

109. In case No. 2242/2013 (*Kalamiotis et al. v. Greece*), the authors invoked their rights under article 17 in connection with the State party's decision to relocate the Roma settlement in which they lived and the risk of forced eviction they faced. The Committee took note of the State party's argument that the Roma settlement was located on private land; that the authorities have the obligation of demolish it in order to restore the property rights of the owners; and that the State never approved the Roma community remaining in the settlement, did not encouraged such behaviour and rather followed a two-track approach consisting of making every effort to identify a suitable alternative to relocate the affected Roma community. The Committee recalled that the term "home" used in article 17 of the Covenant refers to the place where a person resides or carries out his usual occupation. In this communication, it is undisputed that the Halandri settlement where the authors' houses are situated and where they have continuously resided existed unchallenged by the State party's authorities for over 20 years. In these circumstances, the Committee was satisfied that the authors' houses in the Halandri settlement are their "homes" within the meaning of article 17, irrespective of the fact that the authors are not the lawful owners of the plot of land on which these houses were constructed. The Committee had then to determine whether the authors' eviction and the demolition of their houses would constitute a violation of article 17 if the eviction order were to be enforced.

110. The Committee recalled that, under article 17 of the Covenant, it is necessary for any interference with the home not only to be lawful, but also not to be arbitrary. The Committee considers, in accordance with its general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation, that the concept of arbitrariness in article 17 of the Covenant is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. It also considers that States partiesshould limit the use of forced eviction through the adoption of all feasible alternatives to eviction, and guarantee alternative housing for affected families.

111. The Committee noted the authors' claims that the Halandri settlement existed unchallenged by the State party's authorities for over 20 years before the 1995-1996 eviction orders, and that none of the relocation alternatives proposed by the authorities since the beginning of the eviction procedures in 1995 had been accepted by the competent authorities or implemented. Although the State party's authorities are in principle entitled to remove the authors who occupy private land unlawfully, their lack of property rights over the plot of land in question was the only stated justification for the issuance of the eviction order against the community. The Committee also noted that the State party had not identified any urgent reason for forcibly evicting the authors from their homes before providing them with adequate alternative accommodation. Additionally, the eviction decisions were adopted and confirmed on the basis of a decision of the urban planning authorities that the Roma housings in that area were illegal and had to be demolished, regardless of any special circumstances, such as decades-old community life or possible consequences, such as homelessness, and in the absence of any pressing need to change the status quo. In other words, the State party's authorities did not give sufficient weight to the various interests involved and to the protection of the authors from the threat ofimmediate eviction.

112. The Committee also noted that for two decades the State party's authorities did not take any measure to dislodge the authors from the Halandri settlement. Moreover, despite the issuance of various expropriation orders since 1995-1996, the community had remained at its present location for over ten years thereafter. While the informal occupants cannot claim an entitlement to remain indefinitely, the authorities' failure to identify an adapted relocation site resulted in the authors' developing strong links with the Halandri settlementand building a community life there. The Committee also noted that the State party had not provided any information as to which authority is now competent to take decisions related to the relocation of the authors. They therefore remain under a permanent risk of forced eviction without secure and adapted relocation options, and without any clarity as to their perspectives in terms of housing, which amounts to a clear interference with their family life.

113. In the light of the long history of the authors' undisturbed presence in the Halandri settlement, the Committee considered that, by not giving due consideration to the consequences of the authors' eviction, such as the risk of their becoming homeless, in a situation in which satisfactory replacement housing is not immediately available to them, the State party would interfere arbitrarily with the authors' homes, and thereby violate the authors' rights under article 17 of the Covenant, if it enforced the eviction order.

114. In case No. 2128/2012 (*Kerrouche v. Algeria*), the Committee noted the author's claims to have been the victim of unlawful attacks on his honour and reputation and that, after his release from prison in July 2010, he spent nine months with no work or income because no employer in the area would hire him because of his conviction. The Committee recalled that the author was convicted, following proceedings that the Committee has characterized as unjust, for reporting acts of fraud that he had detected in the course of his work as an accountant for a company. Those acts were subsequently confirmed and resulted in the conviction of the company's Director. The author did not, however, receive any redress, had to endure a long period of unemployment that was apparently due to his unjust conviction and feared reprisals if he complained about the treatment to which he was subjected. The Committee recalled that article 17 provides that everyone has the right to be protected against unlawful attacks on their honour and reputation and found that the treatment to which the author was subjected constituted a violation of article 17 of the Covenant.

115. In case No. 2081/2011 (*D.T. v. Canada*), the author claimed that hers and her son's deportation from Canada to Nigeria, her country of origin, would violate several provisions of the Covenant, including articles 17 and 23(1). The Committee considered that to issue a deportation order against the single mother of a seven-year old child who is a citizen of the State party, constitutes "interference" with the family, within the meaning of article 17 of the Covenant. The Committee had then to determine whether such interference with her family life was arbitrary or unlawful pursuant to article 17(1) of the Covenant, and thus whether insufficient protection had been afforded to her family by the State in accordance with article 23(1).

116. The Committee recalled that the notion of arbitrariness includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. In cases where one part of a family must leave the territory of the State party while the other part would be entitled to remain, the relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must be considered in light, on the one hand, of the significance of the State party's reasons for the removal of the person concerned and, on the other hand, of the degree of hardship the family and its members would encounter as a consequence of such removal. In the present case, the Committee observed that the author's removal pursued a legitimate objective, which is the enforcement of its immigration law. In

addition, the State party explained that the reason for removing the author was the denial of her refugee protection claim; that the latter had no legal status which could have led her to expect that she could remain in Canada; and that she was therefore obliged to apply for permanent residence from outside the country.

117. The Committee also noted that the author's son, A.A., was born in Canada in 2004, and left the country for Nigeria with his mother at the age of seven. A.A. suffers from several health conditions, including a heart murmur and a congenital malformation of the meniscus, for which he underwent surgery in Canada. Medical reports indicated that the condition could need one or several arthroscopic surgeries in the future. A.A. also suffered from Attention Deficit Hyperactivity Disorder (ADHD), for which he had been prescribed daily medication, and for which a multidisciplinary intervention plan was developed in his school in Canada, involving special education professionals.

118. The Committee considered that the State party failed to give primary consideration to the best interests of the author's child in this case, and that, as a result, its interference with the author's family life, and the ensuing insufficient protection afforded to her family, generated excessive hardship to the author and her son. The issuance of a removal order faced the author with the choice of leaving her seven-year old behind in Canada, or exposing him to a lack of the medical and educational support on which he was dependent. No information had been provided to the Committee that the child had any alternative adult support network in Canada. It was thus foreseeable that the author would take her son back to Nigeria with her, with the consequence that he would be deprived of the socio-educational support he needed. Given the young age and special needs of A.A., both alternatives confronting the family – the son remaining alone in Canada or returning with the author to Nigeria - could not have been deemed to be in his best interest. Still, the State party had not adequately explained why its legitimate objective in upholding its immigration policy, including in requiring the author to apply for a permanent resident status from outside Canada, should have outweighed the best interests of the author's child, nor how such an objective could justify the degree of hardship which confronted the family as a result of the decision to remove the author. In light of all the circumstances of this case, the Committee considered that the removal order issued against the author constituted a disproportionate interference with the family life of both the author and her son, which could not be justified in light of the reasons invoked by the State party to remove the author to Nigeria.The Committee thus concluded that the author's removal resulted in an arbitrary interference with the right to family life, in breach of article 17(1), read alone and in conjunction with article 23(1) of the Covenant, in respect to the author and her minor son. Furthermore, the Committee reiterated that the principle of the best interest of the child forms an integral part of every child's right to such measures of protection as required by his or her status as a minor, on the part of his or her family, society and the State, as required by article 24, paragraph 1, of the Covenant. In the light of its conclusions under articles 17 and 23(1), the Committee considered that the removal order against the author had also violated article 24, due to a failure to provide A.A. with the necessary measures owed to him by the State party as a child.

119. In case No. 2387/2014 (*A.B. v. Canada*), concerning the deportation of the author to Somalia, the Committee reiterated its jurisprudence that there may be cases in which a State party's refusal to allow one member of a family to remain on its territory would involve interference in that person's family life. However, the mere fact that certain members of the family are entitled to remain on the territory of a State party does not necessarily mean that requiring other members of the family to leave involves such interference. The Committee recalled its general comments No. 16 (1988) on the right to privacy and No. 19 (1990) on the family, according to which the concept of the family is to be interpreted broadly. It also recalled that the separation of a person from his family by means of expulsion can amount to arbitrary interference with the family and a violation of article 17 if, in the circumstances

of the case, the separation of the author from his family and its effects on him would be disproportionate to the objectives of the removal.

120. In the present case, the Committee considers that the author's deportation to Somalia would constitute "interference" with his family relations in Canada, within the meaning of article 17 of the Covenant. The Committee therefore had to examine if that interference could be considered either arbitrary or unlawful. The Committee noted that the State party's Immigration and Refugee Protection Act expressly provides that the permanent residency status of a non-national may be revoked if the person is convicted of a serious offence carrying a term of imprisonment of at least two years. The Committee also noted the State party's observation that the authorities acted neither unlawfully nor arbitrarily and that the minimal disruption to the author's family life was outweighed by the gravity of the author's crimes. The Committee further noted the author's criminal record, which started in 1998, at the age of 19, and continued for over 13 years, totalling 12 criminal convictions including for offences of a violent nature and punishable by long prison terms. The Committee observed that the author had not resided in Somalia since 1990 and did not have any family there; that he had lived in Canada for over 23 yearswhere his mother, sisters and brothers all live; that he would have only limited clan support in his country of origin; and that the means to maintain regular correspondence between the author and his family would be limited. It noted the author's claim that his criminal offences arose from alcohol addiction and that he had committed to a rehabilitation programme. The Committee also noted that the intensity of the author's family ties with his mother, sisters and brothers was questioned by the State party, which submitted that the author had limited contact with his siblings; that as a result of his detention his family was not involved in his rehabilitation and that the family ties and support did not prevent him from committing criminal offences. The Committee further noted the State party's assertion that independent support is available to the author's mother; that the author lived in Somalia until the age of 11; that he speaks Somali, albeit with difficulty; and that he is a member of a majority clan.

121. In the light of the above, the Committee considered that the interference with the author's family life, while significant, would not be disproportionate to the legitimate aim of preventing the commission of further crimes and protecting the public. The Committee therefore concluded that the author's deportation to Somalia, if implemented with due account of the ongoing need to assess the security situation in Mogadishu and southern and central Somalia, including for so-called Western returnees with limited family and clan support, would not constitute a violation of articles 17 and 23 (1), read alone and in conjunction with article 2 (3) of the Covenant.

122. In case No. 2172/2012 (*G. v. Australia*), the author, a male-to-female transgender married to a woman, contended that the State party's refusal to change her sex on her birth certificate, unless she divorced from her spouse, constituted arbitrary or unlawful interference with her privacy and family within the meaning of article 17 of the Covenant. She argued that the invasion of her privacy stemmed from the fact that her sex is different from that recorded on the birth certificate; that her birth certificate thus reveals private information about the fact that she is transgender, as well as her medical history; and that under the current legislation in Australia, the only way to obtain a birth certificate that correctly reflects her sex is to divorce from her spouse, thus interfering with her family.

123. The Committee also noted that sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 explicitly require that a person be unmarried at the time of their application to register a change of sex and to have a new birth certificate issued, and that the wording of the said sections does not allow for any exceptions from this requirement. Furthermore, section 40 (5) of the Sex Discrimination Act 1984 specifically permits state and territory Governments to "refuse to make, issue or alter an official record of a person's sex if a law of a State or Territory requires the refusal because the person is

married". In the circumstances, the Committee considered that the operation of these provisions to deny the author a birth certificate consistent with her sex unless she gets a divorce interfered with her privacy and family. The question was whether the interference was arbitrary. The State party contended that any perceived interference with the author's privacy and family is not arbitrary, since the exemption in sections 32B (1) (c) and 32D (3) is reasonable and proportionate to the legitimate aim of ensuring consistency with section 5 (1) of the Marriage Act 1961, which defines marriage as being between a man and a woman. The State party argued that these provisions go no further than necessary to achieve this legitimate objective, and therefore are not disproportionate.

124. The Committee questioned the necessity and proportionality of the interference with the stated aim. First, it noted that a change in sex on another kind of official identification — a passport — is allowed. The State party had not provided any explanation why a change in sex on a birth certificate would result in irreconcilable and unacceptable conflict with the Marriage Act 1961 if the author remained married, whereas a change in sex on her passport in identical circumstances was allowed. Nor had the State party explained why it was in the State party's interest to issue documents with conflicting identity markers, or documents containing identity information that is not consistent with the actual personal situation, since such documents would mislead a government office, passport control etc. as to the true identity of the bearer. Second, the State party's legal regime left to individual state and territorial Governments the decision whether to refuse or allow changes to a married transgender person's sex on a birth certificate.

125. The Committee noted the author's contention that there were further inconsistencies in the State party's approach to gender identity on issues regarding documentation and recognition of marriages. Namely, section 88EA of the Marriage Act 1961 provided that any union solemnized in a foreign country between two persons of the same sex must not be recognized as a marriage in Australia. However, should a then-heterosexual couple marry overseas and one person subsequently change their sex, including changing their official documentation in the foreign State, the marriage would continue to be valid in Australia. The State party had not explained, inter alia, why recognition of foreign marriages based on the official documentation at the time the marriage was solemnized was consistent with the Marriage Act 1961, but equivalent treatment of marriages solemnized in Australia was not.

126. Moreover, the author contended, and the State party did not dispute, that gender reassignment was lawful in Australia and post-operative transgender individuals are provided with the opportunity to be legally recognized as their reassigned sex and are protected from discrimination on transgender grounds. The author was validly married in Australia. Following her gender reassignment, she was lawfully issued with passports designating her as female, and changed her name on, inter alia, her birth certificate, passport, driver's licence and Medicare card. It was also uncontested that as a result of her gender reassignment, the author had lived in a relationship with a female spouse, which the State party had recognized in all respects as valid. There was no apparent reason for refusing to conform the author's birth certificate to this lawful reality.

127. In light of these considerations and in the absence of convincing explanations from the State party, the Committee was of the view that the interference with the author's privacy and family was not necessary and proportionate to a legitimate interest, and was therefore arbitrary within the meaning of article 17 of the Covenant.

128. In case No. 2425/2014 (*Whelan v. Ireland*), where the author claimed to have been victim of violation of her rights under the Covenant as a result of the legal prohibition of abortion, the author further claimed that by denying her the only option that would have respected her physical and psychological integrity and reproductive autonomy (i.a allowing her to terminate her pregnancy in Ireland), the State party interfered arbitrarily with her

right to privacy under article 17 of the Covenant. The Committee held that the State party interfered with the author's decision not to continue her non-viable pregnancy, pursuant to article 40.3.3 of the Constitution and the Offences against the Person Act. Under these circumstances, the question before the Committee was not whether such interference had a legal basis in domestic law, but rather whether or not the application of domestic law was arbitrary under the Covenant, as even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The State party argued, in this connection, that the interference was not arbitrary, since it was proportionate to the legitimate aims of the Covenant, taking into account a carefully considered balance between protection of the fetus and the rights of women.

129. The Committee considered that the balance that the State party had chosen to strike between protection of the fetus and the rights of the woman in this case cannot be justified. The Committee refered in this regard to its Views in *Mellet v. Ireland*, which dealt with a similar refusal to allow for termination of pregnancy involving a fetus suffering from fatal impairment. The Committee noted that, like in *Mellet v. Ireland*, preventing the author from terminating her pregnancy in Ireland caused her mental anguish and constituted an intrusive interference in her decision as to how best to cope with her pregnancy, notwithstanding the non-viability of the fetus. On this basis, the Committee considered that the State party's interference in the author's decision was unreasonable and that it thus constituted an arbitrary interference in the author's right to privacy, in violation of article 17 of the Covenant.

20. Freedom of thought, conscience and religion (Covenant, art. 18)

130. In case No. 2219/2012 (*Nasyrlayev v. Turkmenistan*), the Committee noted the author's claim that his rights under article 18, paragraph 1, of the Covenant had been violated, due to the absence in the State party of an alternative to the compulsory military service, as a result of which his refusal to perform military service on account of his religious conscience led to his criminal prosecution and subsequent imprisonment. The Committee took note of the State party's submission that the criminal offence committed by the author was 'determined accurately according to the Criminal Code of Turkmenistan' and that, pursuant to article 41 of the Constitution, 'Protection of Turkmenistan is the sacred duty of every citizen' and that general conscription is compulsory for male citizens.

131. The Committee recalled its general comment No. 22, in which it considers that the fundamental character of the freedoms enshrined in article 18 (1) is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalled its jurisprudence that although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of thought, conscience, and religion. The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion.It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.

132. The Committee considered that the author's refusal to be drafted for compulsory military service derived from his religious beliefs and that the author's subsequent conviction and sentence amounted to an infringement of his freedom of thought, conscience, and religion in breach of article 18 (1) of the Covenant. In this context, the

Committee recalled that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, was incompatible with article 18 (1) of the Covenant. It also recalled that during the consideration of the State party's initial report under article 40 of the Covenant, it had already expressed its concern that the Law on Military Duty and Military Service, as amended on 25 September 2010, does not recognize a person's right to exercise conscientious objection to military service and does not provide for any alternative military service, and recommended that the State party, *inter alia*, takes all necessary measures to review its legislation with a view to providing for alternative service. Accordingly, the Committee found that, by prosecuting and convicting the author for the refusal to perform compulsory military service due to his religious beliefs and conscientious objection, the State party violated his rights under article 18 (1) of the Covenant. A similar conclusion was reached in cases Nos. 2220/2012 (*Aminov v. Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*), 2225/2012 (*Nurjanov v. Turkmenistan*), 2226/2012 (*Uchetov v. Turkmenistan*), 2227/2012 (*Yegendurdyyew v. Turkmenistan*) and 2227/2012 (*Yegendurdyyew v. Turkmenistan*).

21. Freedom of opinion and expression and (Covenant, art. 19)

133. In case No. 2205/2012 (*Agazade and Jafarov v. Azerbaijan*),the authors were journalists who claimed that, by failing to hold regular, open and fair tenders to award radio broadcasting licences, the State party violated their right to freedom of expression under article 19 of the Covenant. They argued that since its establishment in 2003, the National Television and Radio Council had never published a list of available radio frequencies, despite being required to do so by law at least once a year; that during this period of 13 years only three tenders for a radio broadcasting license had been held despite the existence of at least 11 available frequencies; and that radio broadcasting licences had been directly awarded by the Council without competition on several occasions to entities affiliated to the Government. The Committee noted that the State party neither contested any of these allegations nor explained the reasons for not holding regular and open tenders to grant broadcasting licenses despite the availability of frequencies over the years. Under these circumstances, the Committee considered that the State party's failure to publish pursuant to its domestic law the list of available broadcasting frequencies and organize on a regular basis multiple open tenders prevented de facto the authors from obtaining radio broadcasting licences, thus falling short of its duty to ensure the right to freedom of expression under article 19 (2), including the right to seek, receive and impart information and ideas of all kinds. In this respect the Committee recalled its general comment No. 34(2011) on the freedoms of opinion and expression, which states that "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society"; and that "as a means to protect the rights of media users … to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media".

134. The Committee had then to determine whether the limitation of the authors' right to freedom of expression was justified by article 19 (3) of the Covenant. The Committee recalled that article 19 allows for certain restrictions to the exercise of the right to freedom of expression, only as provided by law and necessary (a) for the respect of the rights and reputation of others, or (b) for the protection of national security or public order (*ordre public*) or public health or morals. Any restriction on the exercise of those freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. It is for the State party to demonstrate in specific fashion the precise nature of the threat to any ofthe grounds listed that caused it to

restrict freedom of expression. State parties must avoid, in particular, imposing onerous licensing conditions and fees on the broadcast media and the criteria for the imposition of these should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. The penalization of a media outlet or journalist solely for being critical of the Government or the political social system espoused by the Government can never be considered to be a necessary restriction of freedom of expression.

135. In this particular case, the State party had argued that the interference in the author's right to freedom of expression was lawful and necessary for the prevention of disorder in telecommunications and for the protection of the rights of others, as it was designed to ensure pluralism of information. While acknowledging the State party's arguments referring to the need to regulate licensing conditions, the Committee also noted that the State party had not adequately explained why it had not published a list of available radio frequencies despite being required to do so under domestic law, and how the goal of ensuring pluralism in the imparting of information through radio broadcasts has been attained without the regular organization of new tenders to allocate frequencies. Nor had it explained how the attainment of the goals of pluralism and diversity can be reconciled with the practice of allocating broadcasting frequencies without a tender to entities who appear to have ties with the Government of the State party. Consequently, the Committee concluded that the State party had failed to justify that the limitation of the authors' right to freedom of expression resulting from the lack of organization of periodic tenders and the lack of transparency in the allocation of licenses without public tenders was legitimate under the exceptions contained in article 19 (3) of the Covenant. Therefore, the Committee concluded that the limitations imposed on the authors to have access to a radio frequency were arbitrary in nature and amounted to a violation of their rights under article 19 (2) of the Covenant.

136. The Committee found violations of articles 19 and 21 in a number of cases against Belarus involving claims of violations of the right to freedom of opinion and expression and/or the right of peaceful assembly, as the authors had been subjected to sanctions for having taken part in events not authorized under the Law on Mass Events; or had been refused authorization to organize public events; or participated in political meetings; or distributed unauthorized printed materials.

137. In case No. 2082/2011 (*Levinov v. Belarus*), the Committee noted the author's allegations that his freedom of expression had been restricted arbitrarily, since he was refused permission to hold a picket and to publicly express his opinion. The Committee considered that the legal issue before it was to decide whether the prohibitions to hold a public picket imposed on the author by the executive authorities of the State party amounted to a violation of article 19 of the Covenant. From the material before the Committee, it transpired that the author's act was qualified by the courts as an application to hold a public event and was refused on the basis that the location chosen was not among those permitted by the town's executive authorities and because the author had not secured medical care, security and cleaning services during his picket.In the Committee's opinion, the above actions of the authorities, irrespective of their legal qualification, amounted to alimitations of the author's rights, in particular the right to impart information and ideas of all kind, under article 19 of the Covenant.

138. The Committee referred to its general comment No. 34 (2011) on the freedoms of opinion and expression, which states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society. The Committee recalled that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre*

public) or public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. It is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate. The Committee observed that limiting pickets to certain predetermined locations, as well as requesting the organizer of a one-person picket to contract additional services in order to hold a picket, does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. Neither the State party, nor the national courts provided any explanations for such restrictions. The Committee considered that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concluded that the author's rights under article 19 (2) of the Covenant had been violated. A similar conclusion was reached in case No. 2093/2011(*Misnikov v. Belarus*).

139. In case No. 2089/2011, (*Korol v. Belarus*), the Committee considered that arresting the author and sentencing her to an administrative fine for simply protesting and expressing her views, did not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee noted that neither the State party, nor the national courts had provided any explanations for such restrictions. The Committee considered that, in the circumstances of the case, the arrest and the administrative fine of the author were not justified pursuant to the conditions set out in article 19 (3) of the Covenant and concluded that the rightsof the author under article 19 (2) of the Covenant had been violated.

140. In case No. 2101/2011 (*Evrezov v. Belarus*), the Committee observed that the author's application for a picket to protest against political persecution of former candidates for the posts of President of Belarus and members of their electoral teams,was rejected by the municipal authorities on the basis that the notion of 'political persecution' was not defined in the Criminal Code and because there was a sports event already scheduled to take place at the same location on the same date. The Committee notedthat prohibiting a protest against political persecution because the terms of political persecution is not defined in law does not appear to meet the standards of necessity and proportionalityunder article 19 (3) and the second sentence of article 21 of the Covenant. The Committee further noted, that even though there was a second, potentially legitimate ground for refusal, i.e. a previously authorised sports event, there was no indication in the decision of the Executive Committee or the domestic courts, in light of the first objection raised by the Executive Committee, that the author would have been allowed to carry out a picket at an alternative time and/or date. The Committee therefore, concluded that the State party violated the author's rights under articles 19 and 21 of the Covenant. A similar conclusion was reached in case No.2109/2011 (*Basarevsky and Rybchenko v. Belarus*).

22. Prohibition of advocacy of national, racial or religious hatred (Covenant, art. 20(2))

141. In case No. 2124/2011 (*Rabbae et al. v. Netherlands*), the authors claimed that the acquittal of Mr. Geert Wilders, member of parliament, on charges of insult of a group for reasons or race or religion and incitement to hatred and discrimination breached their rights under articles 2(3), 20(2) and 26 The Committee noted that article 20(2) secures the right of people as individuals and as members of groups to be free from hatred and discrimination under article 26 by requiring States to prohibit certain conduct and expression by law. It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. Article 20(2) is crafted narrowly in order to ensure that other equally fundamental Covenant rights, including freedom of expression under article 19, are not infringed. The Committee recalled in this regard that freedom of expression embraces even expressions that may be regarded as deeply offensive. Moreover,

the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential to the promotion and protection of free expression. The Committee further recalled its jurisprudence that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20(2). Nor may such prohibitions be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. The Committee additionally recalled that articles 19 and 20 are compatible with and complement each other. A prohibition that is justified on the basis of article 20 must also comply with the strict requirements of article 19(3). Thus, in every case, measures of prohibition under article 20(2) must also be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of article 19(3), and they must conform to the strict tests of necessity and proportionality. The Committee further notes that article 20(2) does not expressly require the imposition of criminal penalties, but instead requires that such advocacy be "prohibited by law." Such prohibitions may include civil and administrative as well as criminal penalties.

142. The Committee observed that the authors had not challenged the manner in which the State party had chosen to legislatively implement article 20(2), but argued that due to insufficient advocacy by the prosecution, errors in the reasoning of the court, and the lack of any appeal, the criminal prosecution was ineffective in this case. The Committee noted that the State party had chosen to implement article 20(2) through section 137d CC, which is enforceable through criminal prosecution. According to the State party, private remedies are also available through a civil action appended to a criminal proceeding pursuant to section 51 CCP, and through section 6:162 of the Civil Code. According to the State party, the concept of "incitement" in 137d is intended to reach "inflammatory behaviour that incites the commission of criminal offenses or acts of violence." The Committee noted the State party's argument that 137d criminalizes incitement to hatred or discrimination only against persons, not religions, since criticism of even the most deeply-held convictions of the adherents of a religion is protected by freedom of expression. The State party further noted that, in the difficult area of hate speech, each set of facts is particular and must be assessed by a court or impartial decision maker on a case-by-case basis, according to its own circumstances and taking into account the specific context.

143. The Committee observed that in the present case, the State party's domestic law afforded interested persons the opportunity to secure an order from the Amsterdam Court of Appeal directing the public prosecutor to prosecute Wilders. The public prosecutor charged Wilders with "insult of a group for reasons of race or religion" under section 137c and "incitement to hatred and discrimination on grounds of religion or race" under section 137d, for all of the statements set forth in the authors' submission. Pursuant to section 51(a) CCP, the authors joined a civil claim to the criminal proceeding, and were allowed to introduce arguments that Wilder's conduct violated 137d. The Committee also noted the State party's argument that the public prosecutor impartially represented the prosecutor's officeand fully presented the factual and legal issues in the case, and that the court was independently responsible for evaluating the law and evidence and entered judgment after a careful assessment in light of the applicable law of each of Wilders' statements in context.

144. The State party had chosen to establish a legislative framework through which statements contemplated by article 20(2) are prohibited under criminal law, and which allows victims to trigger, and participate in, a prosecution. Such a prosecution was pursued in this case, and the trial court issued a detailed judgment evaluating Wilder's statements in light of the applicable law. The Committee therefore considered, in light of the arguments and the circumstances of the case, that the State party had taken the necessary and proportionate measures in order to "prohibit" statements made in violation of article 20(2) and to guarantee the right of the authors to an effective remedy in order to protect them

against the consequences of such statements. The obligation under article 20(2), however, did not extend to an obligation for the State party to ensure that a person who is charged with inciting to discrimination, hostility or violence will invariably be convicted by an independent and impartial court of law. The Committee therefore could not conclude that the State party violated article 2(3), in conjunction with articles 26 and 20(2) of the Covenant.

23. Right of peaceful assembly (Covenant, art. 21)

145. In case No. 2089/2011, (*Korol v. Belarus*), the Committee considered whether the restrictions imposed on the author's right to freedom of assembly were justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee noted that in the light of the information available on file, the police officers who arrested the author, and the national courts, had not provided any justification or explanation as to how, in practice, the author's protest or demonstration in public would violate the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others as set out in article 21 of the Covenant. Accordingly, and in the absence of the State party's response regarding this matter, the Committee concluded that the State party had violated the author's rights under article 21 of the Covenant. A similar conclusion was reached in case No. No.2109/2011 (*Basarevsky and Rybchenko v. Belarus*).

24. Right of children to measures of protection (Covenant, art. 24)

146. In case No. 2106/2011 (*Kashtanova and Slukina v. Uzbekistan*), the Committee noted the authors' claims that the alleged victims, minors at the time, were questioned as suspects in the Almalyka Prosecutors' office, in the absence of attorneys or parents and that they were not allowed family visits for the first three months of their detention. The State party did not refute these allegations, but merely provided information regarding the criminal charges and the verdict against the alleged victims. The Committee noted that detainees should be guaranteed prompt and regular access to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members.The Committee recalled its General Comment 35, which states that when children are arrested, notice of the arrest and the reasons should also be provided directly to their parents, guardians, or legal representatives. It further recalled that article 24(1) of the Covenant entitles every child "to such measures of protection as are required by his status as a minor on the part of his family, society and the State." That article entails the adoption of special measures to protect the personal liberty and security of every child, in addition to the measures generally required by article 9 for everyone.The Committee therefore considered that the State party had violated article 24(1) in respect of victims who, as minors, should have been afforded special protection.

25. Right to vote and be elected (Covenant, art. 25 (b))

147. In case No. 2481/2014 (*Scarano v. Venezuela*), the author alleged that he was arbitrarily removed from the office of mayor by the Constitutional Chamber of the Supreme Court, an act which, pursuant to the Municipal Government Organization Act, fell under the remit of the Municipal Council. The State party argued that the existence of a final court decision justified the author's removal for permanent absence from office, in keeping with the aforementioned law. Having concluded that the author's detention based on his conviction for contempt was arbitrary and that the proceedings against him violated the due process guarantees provided for in article 14 of the Covenant, the Committee found that his removal from office as mayor and his de facto inability to exercise his right to vote and be elected constituted a violation of article 25 (b) of the Covenant.

26. Right to equality before the law (Covenant, art. 26)

148. In case No. 2245/2013 (*Purna v. Nepal*), the Committee noted the author's uncontested argument that the gang rape to which she was subjected by army members had a discriminatory purpose, as demonstrated by the terms in which she was addressed and the fashion in which she was treated, as well as the generalized use of gang rape against women during the conflict, owing to the particularly serious discriminatory consequences for female rape victims in Nepalese society.The Committee recalled that women are particularly vulnerable in times of internal or international armed conflict and that, during such situations, States must take all measures to protect women from rape, abduction and other forms of gender-based violence. In the light of the context surrounding the gang rape to which the author was subjected, as well as the State party's general failure to investigate and establish accountability for such crimes, the Committee considered that the State party violated the author's right not to be subjected to gender discrimination under articles 2 (1) and 3, read in conjunction with article 7, and article 26 of the Covenant.

149. In case No. 2172/2012 (*G. v. Australia*), the author, a male-to-female transgender married to a woman, claimed to have been discriminated against on the basis of her marital and/or transgender status, because the State party did not allow her to obtain a birth certificate that correctly identified her sex as long as she remained married to her spouse. The State party contended that the distinction between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate is proportionate to the aim of ensuring consistency with the definition of marriage under the Marriage Act 1961.

150. The Committee observed that the prohibition against discrimination under article 26 encompassed discrimination on the basis of marital status and gender identity, including transgender status. It recalled that not every differentiation based on the grounds listed in article 26 amounts to discrimination, as long as it is based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant. The test for the Committee therefore was whether, in the circumstances of this communication, the differential treatment between married and unmarried persons who had undergone a sex affirmation procedure and requested to amend their sex on their birth certificate met the criteria of reasonableness, objectivity and legitimacy of aim.

151. The Committee considered that by legally recognizing gender reassignment and prohibiting discrimination against transgender persons, the State party was providing protection against discrimination. However, by denying transgender persons who were married a birth certificate that correctly identified their sex, in contrast to unmarried transgender and non-transgender persons, the State party failed to afford the author, and similarly situated individuals, equal protection under the law as a married transgender person. The Committee concluded that the distinction being drawn by the State party was not necessary and proportionate to a legitimate interest, and therefore unreasonable. In the absence of convincing explanations from the State party, the Committee considered that the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and who request to amend their sex on their birth certificate is not based on reasonable and objective criteria, and therefore constituted discrimination on the basis of marital and transgender status, under article 26 of the Covenant.

152. In case No.2216/2012 (*C. v. Australia*), the author claimed that the denial under Australian law of access to divorce proceedings for same-sex couples validly married abroad amounted to discrimination on basis of sexual orientation. The author explained the difficulties she experienced in her daily life as a result of not being able to access a court-based divorce mechanism and the anxiety and feelings of humiliation that she endured as a result of the uncertainty about her marital status, for instance when she had to make declarations on her marital status. The State party contended that the author's

discrimination claim was unfounded; that, as a general principle, foreign marriages which are not recognised in Australia do not need access to divorce proceedings; that this principle has exceptions based on the particular circumstances of those marriages; and that there are several categories of foreign marriage, each of which is treated differently.

153. The Committee notes the State party's contention that Australia's divorce law framework is aimed at ensuring that those whose foreign marriages are recognized as valid in Australia have the ability to divorce in Australia and that this aim is legitimate; the proscription of divorce for foreign marriages not recognized in Australia is laid down in legislation and is therefore objective; and the exceptions to this rule are based on objective and reasonable criteria. According to the State party, it is reasonable that Australia reflects its domestic policy and laws on which parties may marry in its law on recognition of foreign marriages and divorce. The State party indicates that the purpose of the exception for foreign polygamous marriages is to enable parties to foreign polygamous marriages access to the assistance, relief and help provided by the family law courts in relation to (but not limited to) children's matters, property matters, maintenance matters or divorce. As to foreign marriages of persons between 16 and 18 years, the State party states that once the parties attain the age of 16 the marriage could be considered valid under Australian law.

154. The Committee considered that the State party's explanation as to the reasonableness, objectivity and legitimacy of the distinction for the differential treatment between the two above mentioned categories of foreign marriages not recognized in Australia and foreign same-sex marriages was not persuasive, and that compliance with domestic law did not in and of itself establish the reasonableness, objectiveness, or legitimacy of a distinction. In particular, the Committee noted that the State party failed to provide a reasonable justification for why the reasons provided for recognizing the exceptions did not also apply to the author's foreign same-sex marriage. For example, the State party had failed to provide any explanation why its stated reason for providing divorce proceedings for unrecognized foreign polygamous marriages, did not apply equally to unrecognized foreign same-sex marriages. In the absence of more convincing explanations from the State party, the Committee considered that the differentiation of treatment based on her sexual orientation to which the author was subjected regarding access to divorce proceedings was not based on reasonable and objective criteria and therefore constituted discrimination under article 26 of the Covenant.

155. In case No. 2425/2014 (*Whelan v. Ireland*), the author claimed that by criminalizing abortion on the ground of fatal fetal impairment through legislation that only restricts the rights of women, the State party violated her rights to equality and non-discrimination under articles 2(1), 3 and 26. The State party maintained that its laws regarding termination of pregnancy are gender-neutral and non-discriminatory.

156. The Committee noted that under the laws of the State party, pregnant women who decide to carry to term their fatally impaired fetuses continue to receive the full protection of the public health care system. Their medical needs continue to be covered by health insurance, and they continue to benefit from the care and advice of their public medical professionals throughout the pregnancy. After miscarriage or delivery of a stillborn child, they receive any needed post-natal medical attention as well as bereavement care. By contrast, women who choose to terminate a non-viable pregnancy must do so in reliance on their own financial resources, entirely outside of the public health care system. They are denied health insurance coverage for these purposes; they must travel abroad at their own expense to secure an abortion and incur the financial, psychological and physical burdens that such travel imposes, and they are denied needed post-termination medical care and bereavement counseling. The Committee further noted the author's uncontested allegations that in order to terminate her non-viable pregnancy, she was required to travel abroad at her own expense.

157. The Committee recalled its general comment No. 28, in which it states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant." The Committee noted the author's claim that she was denied on the basis of her sex access to medical services that she needed in order to preserve her autonomy, dignity and physical and psychological integrity; that, in contrast, male patients and patients in other situations in Ireland are not expected to disregard their health needs and travel abroad in relation to their reproductive functions; and that Ireland's criminalization of abortion subjected her to a gender-based stereotype according to which the primary role of women is reproductive and maternal.The Committee considered that the differential treatment to which the author was subjected in relation to other women who decided to carry to term their unviable pregnancy created a legal distinction between similarly-situated women which failed to adequately take into account her medical needs and socio economic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose. Accordingly, the Committee concluded that the failure of the State party to provide the author with the services that she required constituted discrimination and violated her rights under article 26 of the Covenant.

III. Remedies called for under the Committee's Views

158. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5 (4) of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation. Most often, it also reminds the State party of its obligation to prevent similar violations in the future. When pronouncing a remedy, the Committee observes the following: "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 there has been a violation of the Covenant or not 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 and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views".

159. Decisions on remedies taken by the Committee during the period under review include the following.

160. In case No. 2127/2011 (*Akunov v. Kyrgyzstan*), where the Committee found violations of articles 6 (1) and 7, read alone and in conjunction with article 2(3), concerning the death in custody of the victim after alleged torture, the State party was requested, inter alia, to conduct a new, expeditious, impartial, effective and thorough investigation into the exact circumstances of Mr. Akunov's death; to prosecute those responsible and to provide Mr. Akunov's son with adequate compensation and appropriate measures of satisfaction.

161. In case No. 2164/2012 (*Basnet v. Nepal*), concerning the enforced disappearance of the victim, the State party was requested, inter alia, to: (a) conduct a thorough and effective investigation into the disappearance and provide the author with detailed information about the results of its investigation; (b) if her husband is dead, locate his remains and hand them over to his family; (c) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment are provided to the author free of charge; and (e) provide effective reparation, including adequate compensation and appropriate measures of satisfaction, to the author and her husband, if he is alive, for the violations suffered. The State party was also under an obligation to take steps to prevent the

occurrence of similar violations in the future. In particular, the State party should ensure that:i) its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance; and ii) any enforced disappearances give rise to a prompt, impartial and effective investigation. Similar measures of reparation were requested in cases Nos. 2184/2012 (*Nakarmi v. Nepal*), 2185/2012 (*Dakhal v. Nepal*).

162. In case No. 2206/2012 (*Lale and Popović v. Bosnia and Herzegovina*), where the Committee found violations of article 6 in conjunction with article 2(3), and of article 7, concerning the enforced disappearance of the authors' mothers, the State party was requested, inter alia, to: (a) intensify its investigations to establish the fate or whereabouts of Mrs. Lale and Mrs. Popović, as required by the Law on Missing Persons of 2004; (b) strengthen its efforts to bring to justice those responsible for these disappearances without unnecessary delay, as required by the National War Crimes Prosecution Strategy; (c) ensure that any necessary psychological rehabilitation and medical care is made available to the authors for the psychological harm they have suffered; and (d) provide adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearances and adequate measures of reparation are accessible to the families of missing persons.

163. In case No. 2157/2012 (*Belamrania v. Algeria*), where the Committee found violations of articles 6(1) and 7, the State party was requested to (a) conduct a thorough and rigorous investigation into the alleged summary execution of Mohammed Belamrania; (b) provide his family with detailed information on the results of the investigation; (c) prosecute, try and punish those responsible for the violations; (d) provide the victim's family with appropriate compensation and redress. Order No. 06-01 notwithstanding, the State party should also ensure that it does not prevent the victims of offences such as torture, extrajudicial killing and enforced disappearance from exercising their right to an effective remedy. In addition, the State party is required to take steps to prevent similar violations from reoccurring in future. A similar request was made in case No. 2259/2013 (*Boathi v. Algeria*), concerning an enforced disappearance. The Committee held in this case that the State party should review its legislation in the light of its obligation under article 2 (2) and, particularly, reconsider Ordinance No. 06-01 with a view to ensuring that the rights established under the Covenant may be fully enjoyed in the State party.

164. In case No. 2462/2014, where the Committee found that the author's deportation to Bangladesh would amount to a violation of article 7 of the Covenant, the Committee requested the State party to proceed to a review of his claim taking into account the State party's obligations under the Covenant and the Committee's Views.The State party was also requested to refrain from expelling the author while his request for asylum was being reconsidered.

165. In case No.2464/2014 (*A.A.S. v. Denmark*), where the Committee found that the author's deportation to Somalia would constitute a violation of article 7 of the Covenant, the State party was requested to proceed to a review of the author's claims, taking into account the State party's obligations under the Covenant and the Committee's Views. The State party was also requested to refrain from expelling the author while his request for asylum was being reconsidered.

166. In case No. 2469/2014 (*E.U.R. v. Denmark*), where the Committee found that the author's deportation to Afghanistan would constitute a violation of article 7 of the Covenant, the State Party was requested to proceed to a review of the decision to forcibly remove the author, taking into account the State party'sobligations under the Covenant and the Committee's Views. The State party was also requested to refrain from expelling the author while his request for asylum was being reconsidered.

167. In case No. 2379/2014 (*Ahmed v. Denmark*), where the Committee held that the removal of the author and her daughters to Italy as first country of asylum would amount to a violation of article 7 of the Covenant, the Committee stated thatthe State party was under an obligation to provide the authorand her four daughters with an effective remedy, including full reconsideration of her claim, taking into account the State party's obligations under the Covenant, the Committee's Views, and the need to obtain assurances from Italy, as set out in the Views, if necessary. The State party was also requested to refrain from expelling the author and her four children to Italy while their request for asylum was being reconsidered.

168. In case No. 2106/2011 (*Kashtanova and Slukina v. Uzbekistan*), where the Committee found violations of articles 7, 10(1) and 24(1), the State party was required to carry out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment, initiate criminal proceedings against those responsible and provide the victims with appropriate compensation.

169. In case No. 2128/2012, (*Kerrouche v. Algeria*), where the Committee found violations of article 2 (3) of the Covenant, read in conjunction with article 7; 14 (1) and (3) (b), (c) and (d); 17 and 19 of the Covenant the State party was requested to conduct a full and effective investigation, to prosecute and punish the perpetrators, and to provide appropriate measures of satisfaction to the author. The State party was also required to review its national legislation, in particular article 144 of the Criminal Code, in order to bring it into conformity with article 19 of the Covenant.

170. In case No. 2317/2013 (*Ortikov v. Uzbekistan*), where the Committee found violations of articles 7, read alone and in conjunction with article 2(3); article 9(1) and article 10(1), the State party was requested, inter alia, to: (a) conduct a thorough and effective investigation into the author's allegations of torture; (b) prosecute and punish those responsible for the torture of the author; and (c) provide compensation to the author for the violations suffered.

171. In case No. 2125/2011 (*Tyan v. Kazakhstan*), where the Committee found violations of article 2 (3), read in conjunction with article 7; and of article 14 (1) and (3) (d) and (g) of the Covenant, the State party was requested, inter alia, to: (a) conduct a thorough and effective investigation into the author's allegations of torture and, if confirmed, prosecute, try and punish those responsible for the torture of the author; (b) review the court's verdict in the author's case with the exclusion of the confessions the nature of which was not duly verified by the court; and (c) provide compensation to the author for the violations suffered.

172. In case No. 2245/2013 (*Purna v. Nepal*), concerning the author's rape by members of the army the Committee found violations of article 7, read alone and in conjunction with article 2 (3); of articles 2 (1) and 3, read in conjunction with article 7; of article 26; of article 2 (3), read in conjunction with articles 7 and 26; and of article 9 of the Covenant. The State party was requested, inter alia, to: (a) conduct a thorough and effective investigation into the facts submitted by the author, in particular the treatment to which she was subjected; (b) prosecute, try and punish with appropriate sanctions those responsible for her arbitrary detention, torture and harassment, and make the results of those measures public; (c) provide adequate compensation and appropriate measures of satisfaction to the author for the violations suffered, including reimbursement for medical expenses incurred to treat the injuries sustained as a result of torture; and (d) ensure that all necessary and adequate psychological rehabilitation and medical treatment was provided to the author. Under the obligation to take steps to prevent the occurrence of similar violations from occurring in the future the State party was requested, consistent with its obligations under article 2 (2) of the Covenant, to: (a) abolish the 35-day statute of limitation for filing complaints of rape; (b) remove obstacles that hinder the filing of complaints and effective access to justice for victims of rape, including by ensuring the confidentiality and

protection of victims during the filing of a complaint, the investigation and the proceedings, increasing the number of female police officers and prosecutors, establishing policies for the confidential storage of medical records of victims of sexual violence in hospitals, and providing interim relief to victims of sexual violence that occurred during the conflict; (c) criminalize torture and remove legal provisions allowing for impunity for this crime; (d) facilitate a national dialogue on sexual violence against women to increase the visibility of the issue and the status of victims in Nepalese society; and (e) provide training and conduct awareness-raising campaigns on violence against women and provide adequate protection to victims.

173. In case No. 2412/2014 (*Samathanam v. Sri Lanka*), where the Committee found violations of articles 7, 9 10 and 14(3)(g), the State party was requested to inter alia: (a) conduct a thorough and effective investigation into the facts submitted by the author; (b) prosecute, try and punish those responsible for the author's arbitrary arrest, ill-treatment and inhumane detention, and make the results of such measures public; and (c) provide adequate compensation and appropriate measures of satisfaction to the author for the violations suffered. The State party was also under an obligation to take steps to prevent similar violations in the future. In particular, the State party should ensure that: (a) its legislation complies with the provisions of the Covenant; and (b) the burden of proving that a confession has not been obtained under torture or other ill-treatment rests with the prosecution in proceedings against the alleged victim.

174. In case No. 2359/2014 (*Saidarov et al. v. Kyrgyzstan*), where the Committee found violations of article 7, read in conjunction with article 2 (3), and article 9 (1) of the Covenant, the State party was requested to take appropriate steps to conduct a prompt and impartial investigation into the authors' allegations of torture; and to provide the authors with adequate compensation.

175. In case No. 2555/2015 (*Allabediev v. Uzbekistan*), where the Committee found violations of articles 7, 9 (1), and 14 (3) (b), (e) and (g) of the Covenant, the State party was requested: (a) to quash the author's conviction and its attendant consequences, including terminating without delay his incarceration on that basis, and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; and (b) to conduct a full and effective investigation into the author's allegations of torture, to prosecute the perpetrators and punish them with appropriate sanctions, and to provide adequate compensation and appropriate measures of satisfaction.

176. In case No. 2146/2012 (*Suleimenov v. Kazakhstan*), where the Committee found violations of article 7 read alone and in conjunction with article 2(3), and of article 10(1), the State party was requested, inter alia, to take appropriate steps: 1) to conduct a prompt and impartial investigation into the authors' allegations of torture and ill-treatment; 2) to provide the author with adequate compensation; 3) to provide the author with appropriate medical care and assistance considering his disability and medical condition, including permitting access to private doctors and nurses to examine and assist the author.

177. In case No. 2187/2012 (*Bazarov v. Kyrgyzstan*), where the Committee found violations of articles 2(3), 9(1) and 14(3)(g), the State party was requested, inter alia, to take appropriate steps to release the author; quash his conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other safeguards; conduct a prompt and impartial investigation into the author's allegations of torture; and provide the author with adequate compensation and reimbursement of the court fines as well as any legal costs and other related fees incurred by him.

178. In case No. 2481/2014 (*Scarano v. Venezuela*), where the Committee found violations of articles of articles 9, 10, 14 (1), (3) and (5), and 25 (b) of the Covenant

regarding the sentencing and imprisonment of a mayor the State party was requested to provide adequate compensation to the author.

179. In case No.2107/2011 (*Berezhnoy v. Russian Federation*), where the Committee found violations of the author's rights under article 9 (3) and (4), article 10 (2) (b), article 14 (3) (b) and (c), and article 14 (4), read in conjunction with article 24 (1) of the Covenant, the State party was requested to provide the author with adequate compensation, including reimbursement of the court fines, the legal costs and other related fees.

180. In case No. 2388/2014 (*Kingue v. Cameroon*), where the Committee found violations of article 9(1), (3) and (5), the State party was requested, inter alia, to provide the author with an effective remedy, including adequate compensation.

181. In case No. 2465/2014 (*Mambu v. Democratic Republic of the Congo*), where the Committee found violations of article 2 (3), read in conjunction with article 9; and articles 9 (1), 10 (1), 14 (1), and 14 (3) (b) of the Covenant, the State party was requested to take appropriate measures to: (a) immediately release the author; (b) declare the author's conviction null and void and, if necessary, initiate new proceedings that are consistent with the principles of fairness and the presumption of innocence, in addition to other legal safeguards; and (c) provide the author with adequate compensation.

182. In case No. 2496/2014 (*Kostin v. Russian Federation*), where the Committee found a violation of article 14(3)(d), the State party was requested to provide the author with adequate compensation and review the court's verdict in compliance with the Covenant.

183. In case No. 2118/2011 (*Saxena v. Canada*), where the Committee found violations of the author's rights under article 13, the State party was requested to revise and amend its extradition legislation, including a procedure for consent to a waiver of specialty, in full compliance with the State party's obligations under the Covenant, and the Committee's Views in the case.

184. In case No. 2242/2013 (*Kalamiotis et al. v. Greece*), concerning the eviction and demolition orders from the settlement where the authors lived, amounting to violation of article 17(1), the State party was requested to refrain from executing such orders so long as satisfactory replacement housing was not available.

185. In case No. 2172/2012 (*G. v. Australia*), the Committee found violations of articles 17(1) and 26 in that the legislation did not allow the author, a male-to-female transgender, to have her sex changed in her birth certificate. The State party was requested to provide the author with a birth certificate consistent with her sex. Under the obligation to prevent similar violations in the future the Committee held that, consistent with its obligations under article 2 (2) of the Covenant, the State party should revise its legislation to ensure compliance with the Covenant.

186. In case No. 2081/2011 (*D.T. v. Canada*) the Committee concluded that the removal of the author and her minor son to Nigeria was in breach of article 17(1), read alone and in conjunction with article 23(1), as well as article 24 of the Covenant. The State party was requested, inter alia, to provide the author with an effective re-evaluation of her claims which is based on an assessment of the best interests of her child, including his health and educational needs; and to provide her with adequate compensation.

187. In case No. 2205/2012 (*Agazade and Jafarov v. Azerbaijan*), involving violation of the right to freedom of expression of two journalists, the State party was requested to review its laws on television and radio broadcasting with a view to ensuring that radio broadcasting licenses appertaining to available broadcast frequencies are actually allocated on the basis of clear and transparent procedures guaranteeing regular and open competitions by which candidates are assessed on the basis of non-discriminatory criteria, and with the aim of promoting media pluralism in the country.

188. In case No. 2082/2011 (*Levinov v. Belarus*), involving violations of the right to freedom of expression following prohibition to hold a picket, the State party was requested to take appropriate steps to provide the author with adequate compensation and to take steps to prevent similar violations occurring in the future. In this connection, the Committee reiterated that the State party should revise its legislation consistent with its obligation under article 2 (2), in particular, the Decision No. 881of the Vitebsk Town Executive Committee and the Law on mass events of 30 December 1997, as it had been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party. A similar remedy was requested by the Committee in cases Nos. 2089/2011, (*Korol v. Belarus*), 2093/2011(*Misnikov v.Belarus*) and 2109/2011 (*Basarevsky and Rybchenko v. Belarus*).

189. In cases Nos. 2219/2012 (*Nasyrlayev v. Turkmenistan*), 2220/2012 (*Aminov v.Turkmenistan*), 2224/2012 (*Matyakubov v. Turkmenistan*), 2225/2012 (*Nurjanov v. Turkmenistan*), 2226/2012 (*Uchetov v. Turkmenistan*) where the Committee found, as applicable, violations of the authors' rights under articles 7, 10 (1), 14 (7) and 18 (1) of the Covenant in connection with their conviction and sentence as conscientious objectors the State party was requested, inter alia, to impartially, effectively and thoroughly investigate the authors' claims falling under article 7; to prosecute any person(s) found to be responsible; to expunge the authors' criminal record; and to provide them with adequate compensation. Under the obligation to avoid similar violations of the Covenant in the future the Committee reiterated that the State party should revise its legislation in accordance with its obligations under article 2(2), in particular the Law on Military Duty and Military Service, as amended on 25 September 2010, with a view to ensuring the effective guarantee of the right to conscientious objection under article 18(1) of the Covenant.

190. In case No. 2216/2012 (*C. v. Australia*), the Committee considered that the differentiation of treatment based on her sexual orientation to which the author was subjected regarding access to divorce proceedings was not based on reasonable and objective criteria and constituted discrimination under article 26 of the Covenant. The State party was requested to provide the author with full reparation for the discrimination suffered. The Committee also held that the State party was under an obligation to take steps to prevent similar violations in the future and to review its laws in accordance with the Committee's Views.

191. In case No. 2425/2014 (*Whelan v. Ireland*), where the Committee found violations of articles 7, 17 and 26 in connection with denial of access to termination of pregnancy in Ireland, the State party was requested to provide the author with adequate compensation and to make available to her any needed psychological treatment. The State party was also under an obligation to take steps to prevent similar violations occurring in the future. To this end, the State party should amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, including ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions, as indicated in these Views of the Committee.