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|  | United Nations | CCPR/C/122/R.2 |
| _unlogo | **International Covenant onCivil and Political Rights**Advance unedited version | Distr.: Restricted29 May 2018Original: EnglishEnglish, French and Spanish only |

**Human Rights Committee**

**122nd session**

March 2018

Item 8 of the provisional agenda

**Follow-up to Views under the Optional Protocol to the Covenant**

 **Follow-up progress report on individual communications**

**A. Introduction**

1. At its thirty-ninth session, the Human Rights Committee established a procedure and designated a Special Rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 101, paragraph 3, of the Committee’s rules of procedure. The present report sets out information provided by States parties and authors or their counsel/representative received, or processed, until March 2018.

2. As of the conclusion of the 122nd session, the Committee has concluded to a violation of the Covenant in 1,061 of the 1,282 Views it has adopted since 1979.

3. At its 109th session, the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.

4. At its 118th session, on 4 November 2016, the Committee decided to revise its assessment criteria.

**Assessment criteria (*as revised during the 118th session*)**

*Assessment of replies*[[1]](#footnote-1)

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| **A** | **Reply/action largely satisfactory**: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee. |
| **B** | **Reply/action partially satisfactory**: The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary. |
| **C** | **Reply/action not satisfactory**: A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation. |
| **D** | **No cooperation with the Committee**: No follow-up report has been received after the reminder(s). |
| **E** | **Information or measures taken are contrary to or reflect rejection of the recommendation** |

**5.** At its 121st session, on 9 November 2017, the Committee decided to revise its methodology/procedure to monitor follow-up on its Views.

**Decisions taken:**

1. Grading will no longer be applied for the publication of the Views
2. Grading will be applied for the State Party’s response on measures of non-repetition only if such measures are specified in the Views
3. The follow-up report will contain only information on cases that are ready for grading by the Committee, i.e. where there is a reply by the State party and information by the author.

 **B. Follow-up information received and processed between July 2017 and March 2018**

 **1. Algeria[[2]](#footnote-2)**

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| *Communication No. 2157/2012, Belamrania* |

Views adopted: 27 October 2016

Violation: 2 (3), 6 (1) and 7

Remedy: (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

Subject matter: Summary execution

Previous follow-up CCPR/C/121/R.1

information**:**

Submissions from 4 August 2017; 21 November 2017

the author’s counsel:

On 4 August 2017, in response to the State party’s submission, the author’s counsel maintains that the fact that the criminal procedures against the author were initiated based on the initiative of the Wali of Jijel, the highest state official at regional level, and not at the initiative of the judicial authorities, only confirms the political character of the criminal proceedings. The author’s counsel clarifies that the author is formally accused of supporting two bloggers who were arrested on count of ‘encouraging terrorism’, but acquitted by the criminal tribunal of Jijel on 22 March 2017 on the ground of inconsistent charges brought against them. Further, counsel informs that the documents seized in the author’s home concerned the association of children of the victims of enforced disappearance in the region; and that the author was mostly interrogated over the complaint he brought before the Committee. He maintains that the author’s allegations of reprisals are well-founded.

On 21 November 2017, counsel added that the author, Mr. Rafik Belamrania, was brought on 15 November 2017 before the Criminal Court of Jijel, questioned mainly about his activities as a human rights defender, and sentenced to five years in prison and to a fine. He was also subjected to an additional sanction depriving him of “civil and political rights” for three years.

On 22 December 2017, the Committee, acting through the Special Rapporteur for follow-up to Views, and the Special Rapporteur on reprisals, sent a letter to the State party, transmitting the letter received from the author’s counsel, and seeking clarifications within two weeks.

Submissions from 11 January 2018
the State party:

The State party informs that it had submitted information on 18 July 2017 and 29 May 2018, addressed respectively to the Human Rights Committee and to a number of Special procedures the, regarding the case submitted on behalf of Mr. Rafik Balamrania by the NGO “Al Karama”.

The State party recalls its previous observations: on 28 November 2016 the criminal police of Jijel received a communication from Wali de Jijel informing that a citizen publicly supported the accused implicated in a case of acts of terrorism which took place outside the country and glorified terrorism on the social network “Facebook”. The investigations conducted under the authority of the public prosecutor revealed that the account holder is Rafik Belamrania. It transpired that he used this account to disseminate pictures and express support to terrorist organisations outside the country, including DAESH. On the same page comments about two accused implicated in a case of glorification of terrorism and photos of terrorists wanted for prosecution appeared.

The public prosecutor issued a search warrant to seize any documents and publications related to the said Facebook account, at Mr. Belamrania’s residence.

On 20 February 2017, the criminal police interviewed Mr. Belamrania and placed him in police custody the same day at 6pm.

On 22 February 2017 at 8am he was summoned by the public prosecutor at the tribunal of Jijel where he was prosecuted for apology of terrorist attacks.

Following the hearing, in the presence of his lawyer, the examining magistrate ordered pre-trial detention on 22 February 2017.

The State party

maintains that:

- the allegations about the author’s alleged arbitrary detention are unfounded considering that his arrest by the criminal police took place in accordance with article 65 of the criminal procedure code,

- the duration of his detention did not exceed 48 hours, despite the seriousness of the situation implying terrorist attacks which allowed the extension of the duration of detention in custody for up to 240 hours (five times 48 hours).

- the proceedings related to his detention complied with the law. Moreover, the examining magistrate had a period of four months from 22 February 2017 to conduct investigations. This period was renewable upon the decision of the magistrate.

Mr. Belamrania enjoyed all the guaranties provided for under the law during the arrest, hearing, and trial.

The State party notes that the arrest and prosecution of Mr. Belamrania were not related to the case concerning his father or his alleged activities as a human rights defender but that they took place in the context of a criminal offence implying the apology of terrorism which is prohibited by the criminal law in Algeria.

Submissions from 8 February 2018
the author’s counsel:

On 8 February 2018, in an email, the author’s counsel recalls that on 15 November 2017, Mr Belamrania was sentenced to five years in prison for ‘incitement to terrorism’, to a fine of 100,000 Algerian dinars and was deprived “of his civil and political rights” for a period of three years. He adds that on 5 February 2018, on appeal, Mr Belamrania’s sentence was modified to one year imprisonment followed by a two-year suspended prison sentence and a fine of 100,000 Algerian dinars. Counsel urges the Committee to intervene with the State party to put an end to the reprisals to his client, and further requests to have appropriate measures taken as guarantees of non-repetition, including a review and reform of laws contributing to or allowing gross violations of international human rights law.

Committee’s decision: Follow-up dialogue ongoing.

 **2. Algeria**

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| *Communications No. 992/2001, 1196/2003, 1327/2004, 1328/2004, 1791/2008, 1796/2008, 1798/2008, 1874/2009, 1900/2009, 1905/2009, 2259/2013, 1495/2006, 1588/2007, 1779/2008, 1807/2008, 1811/2008, 1831/2008, 1889/2009, 1899/2009, 1781/2008, 1806/2008and 1884/2009* |

Submissions from 19 February 2018
the State party:

In the context of the meeting held on 14 July 2017 with the Special Rapporteur for follow-up to Views, the State party’s representative agreed to request from the Ministry of Justice follow-up observations for each individual case currently under the Committee’s follow-up procedure. As a result, on 19 February 2018, the State party submitted information concerning 23 communications in the form of a table, which indicates 1) the results of the search of the missing by December 2017 and 2) the compensation families have received in line with the Charte de réconciliation nationale.

The Committee notes that in many cases, the compensation was received before the lodging of a case with the Committee. The State party submits that in some cases (1495/2006, 1588/2007, 1779/2008, 1807/2008, 1811/2008, 1889/2009, 1899/2009) the authors have not claimed their right to receive compensation provided by the Charter. In cases 1782/2008, 1806/2008 and 1884/2009, no information is provided with regard to the compensation. In all cases, the compensation given was in line with the Charte de réconciliation nationale and not related to the implementation of the Committee’s views.

Committee’s assessment: **(**a) Effective remedy: E; (b) Non-repetition: D

Committee’s decision: Suspend follow-up dialogue with the finding of unsatisfactory implementation. For non-repetition, continue to follow up in the framework of the reporting procedure.

**3. Australia**

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| ***Communication No. 2216/2012, C. v Australia*** |

Views adopted: 28 March 2017

Violation: Art. 2(1); Art. 14(1); Art. 26

Remedy: 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.

Subject matter: Denial under Australian law of access to divorce proceedings for same-sex couples validly married abroad amounting to discrimination on the basis of sexual orientation.

Previous follow-up None

information**:**

Submissions from 2 February 2018
the State party:

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

On 9 September 2017, the Australian Parliament adopted a number of legislative amendments, allowing same-sex couples, including those in the author’s circumstances, to marry and divorce. These amendments directly address the Committee’s Views.

The following amendments were adopted: the Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth) (Marriage Amendment Act) amended the Marriage Act 1961 (Cth) (Marriage Act). The ability to marry in Australia is no longer determined by sex or gender. The Marriage Act now recognises same-sex marriages and enables divorce from such marriages, including those entered into overseas. The Act also makes consequential amendments to various other laws, including the Family Law Act 1975 and introduces transitional provisions relating to same-sex couples who were married in an overseas jurisdiction prior to 9 December 2017. As a result, at present, individuals who entered into a foreign same-sex marriage before 9 December 2017 are able to divorce in Australia provided that the relevant requirements for divorce are met. Likewise, individuals who enter into a same-sex marriage after 9 December 2017 will also be able to access divorce, provided they meet the relevant requirements.

The sex or gender of the parties to the marriage no longer affects access to divorce in Australia from a marriage entered into overseas. The requirements for access to divorce, including for marriages entered into overseas, are the same for both opposite-sex and same-sex marriages.

In relation to the requirements for divorce from a foreign marriage, the Family Law Act requires that the parties to the marriage have lived separately and apart for at least twelve months prior to filing the application for divorce and that there be no reasonable likelihood of reconciliation between the parties.

The State party notes that based on the information provided to the Committee regarding the cessation of her relationship with her spouse, the author will likely satisfy the requirements for access to divorce in Australia, and she can apply in court for a divorce if she chooses to do so.

Thus, the above legislative changes have provided the author with access to divorce proceedings. The changes have removed wholly the difference in Australian law upon which the Committee’s finding of violation is based. As the changes apply to same-sex couples who entered into foreign marriages before 9 December 2017 as well as those who do so after that date they have also ensured that no similar situation can occur.

The changes have therefore addressed the Committee’s views not only in respect of the author personally, but also in relation to the recurrence of a similar situation in the future.

Committee’s assessment: (a) Full reparation[[3]](#footnote-3): C

(b) Non-repetition: A

Committee’s decision: Follow-up dialogue ongoing.

**4. Australia[[4]](#footnote-4)**

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| *Communication 1875/2009, M.G.C. v Australia* |

Views adopted: 26 March 2015

Violation: Article 9

Remedy: Provide the author with an effective and appropriate remedy.
including compensation; obligation to prevent similar violations in the future. In this connection, the State party should review its migration legislation to ensure its conformity with the requirements of article 9 of the Covenant.

Subject matter: Deportation to the United States of America

Previous follow-up None

information**:**

Submissions from 2 October 2015 and 12 June 2016
the State party:

As per the Committee’s request, the views have been published on the website of the Australian Attorney-General’s Department.

The State party notes that it does not share the Committee’s view that the detention of the author, despite being pursuant to law, was arbitrary and in breach of article 9(1) of the Covenant.

It reiterates that it is entitled to take measures, including detention, to control the entry of non-citizens into its territory and that this is consistent with the fundamental principle of sovereignty in international law. The Committee acknowledged in its views that immigration detention for administrative purposes is not arbitrary per se. Australian law provides for the detention of unlawful non-citizens at the end of a term of criminal custody, to ensure the availability for removal of persons who have no lawful basis to remain in Australia. Thus, the author’s detention in this context was for a legitimate purpose.

The length of the author’s immigration detention is related to legal proceedings instituted by the author regarding the cancellation of his spouse visa and refusal of his Protection visa application. In respect of both visa claims, the author had access to the highest levels of review, including by way of applications to the High Court of Australia and for ministerial intervention. While litigation was ongoing, the author has not been removed but this prolonged the author’s detention.

The State party notes that the Committee reached its conclusions on article 9 partially on the basis of its understanding that the authorities failed to make an individual assessment of the need to maintain the author in immigration detention. The State party objects that in fact it did review the author’s circumstances during his immigration detention on four separate occasions. The Minister has discretionary powers to intervene to grant a visa or make a determination for the person’s community detention, if the Minister believes that this is in the public interest. The author’s circumstances were considered for possible ministerial intervention under section 195A on three occasions and on one occasion under section 197AB of the Act. Each time, the Minister declined to intervene. Thus, the author’s detention was reviewed on several occasions and in substantive terms, and his detention is in line with the requirements of article 9, paragraph 1, of eth Covenant. Accordingly, the State party is not under an obligation to provide the author with a remedy, nor conduct a review of its migration legislation.

Committee’s assessment: Adequate compensation: E; Non-repetition: E

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

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| *Communication No. 1397/2005, Engo* |

Views adopted:22 July 2009

Violation: Article 9 (2) and (3), article 10 (1), and article 14, paragraphs (2) and (3) (a), (b), (c) and (d)

Remedy:An effective remedy leading to his immediate release and the provision of adequate ophthalmological treatment.

Subject matter: Arbitrary detention

Previous follow-up CCPR/C/116/3; CCPR/C/121/R.1

information**:**

Committee’s assessment: (a) Release: A; (b) Provision of adequate ophthalmological treatment: B; (c) Non-repetition: C[[5]](#footnote-5)

Committee’s decision:Close the follow-up dialogue, with a note of partially satisfactory implementation of the Committee’s recommendations

**6. Democratic Republic of Congo[[6]](#footnote-6)**

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| *Communication No. 16/1977, Mbenge (old case number R.3/16 ZAIRE)* |

Views adopted: 25 March 1983

Violation: Articles 6 (2), 14 (3) (a), (b), (d) and (e) and 9

Remedy: compensation

Subject matter: Political persecution of Zairian citizens –

political refugees.

Previous follow-up None

information**:**

Submissions from 29 May 2015
the author:

The author submits that the authorities in DRC do not have the political will to establish the rule of law. He reiterates that the State party does not respect the authority of the Committee as its Views have not been implemented. He requests that the prime minister provides him with compensation in the amount of 9 million USD and with the value assessment of his real estates in DRC in order to obtain restitution of his and his sister’s property.

Committee’s assessment:(a)compensation: D; (b) non repetition: D

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

**7. Ecuador**

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| *Communication No. 2244/2013, Dassum* |

Views adopted: 30 March 2016

Violation: Article 14 (1) - fair hearing in the determination of the authors’ rights and obligations in a suit at law.

Remedy: Make full reparation to the persons whose rights under the Covenant have been violated. Consequently, ensure that due process is followed in the relevant suits at law, in accordance with article 14 (1) of the Covenant.

Subject matter: Criminal conviction and seizure of authors’ assets

Previous follow-up None

information**:**

Submissions from 1 December 2016
the State party:

The State party refers to the views of the Committee in Millan Sequeira vs. Uruguay, Zdenek Vlcek v. Czech Republic, Laptsevich v. Belarus, Syargei Belyazeka v. Belarus, and Adrien Mundyo v. Democratic Republic of Congo, Dzhakishev v. Kazakhstan, Foin v. France and Maille v. France, and refers to the Committee’s remedy recommendations made to the respective States parties. The State party concludes that the Committee requests remedies that are tailored exclusively to the violation found, and that the Committee has been very specific in the past when it has wanted to provide the payment of compensation in favour of victims, which it did not do in the present case.

Further, the State party elaborates on the measures taken to give effect to the Committee’s views.

In their communication, the authors requested that the State provide them with an effective remedy from independent and impartial judges, and that Legislative Decree No 13 should be declared ineffective. They claimed that Legislative Decree No. 13 prevented them from accessing justice. The Committee held that the Legislative Decree No. 13, which prohibits filling an application for constitutional remedy against the decisions of the Deposit Guarantee Agency (AGD) and includes the dismissal of judges who took cognizance of such applications, violates the right of the authors under Article 14(1). The only violation the Committee found was the prohibition to file an application for a constitutional remedy and other special complaints against the AGD decision. The Committee, however, never expressed its views about the legality of the AGD decision. The Committee found that the State party had to provide an effective remedy by assuring that the civil process complies with the guaranties under Article 14(1) and the present Views.

Regarding the effectiveness of domestic remedies, the Law of the Contentious Administrative Jurisdiction regulates acts such as the AGD decision and an administrative complaint would have been the proper way to dispute the AGD decision. The State complied with its obligation to provide effective remedies to the authors because at the moment of the events the authors could have lodged an administrative complaint, which could have provided an effective remedy. Once the process with the administrative court would have been over, the authors would also have had the possibility to lodge an extraordinary appeal to the National Court of Justice. Therefore, the authors had effective remedies at their disposal, however, they failed to consider these.

The State party next informs the Committee that its Ministry of Justice, Human Rights and Cults of Ecuador as well as the Ministry of Foreign Affairs and Human Mobility broadly disseminated the views in the State party.

Therefore, the State party has complied with applying the views of the Committee and asks to have the case closed.

Author’s counsel comments: 7 August 2017

According to counsel, the State party’s interpretation regarding reparations is one sided and arbitrary and reduces the reparations to offer a judicial remedy, which cannot be seen as a complete remedy for the violations. Apart from being wrong and confusing, this interpretation lacks knowledge of the international principles on reparations.

Since the authors’ rights of due process under article 14 have been violated, the Committee found that the State had the obligation to provide the authors with effective remedy.

In relation to the complaint, the views expressly referenced the irregularities that occurred during the seizure of the authors’ assets. The Committee stated that during the seizure of the assets the author’s rights under 14(1) and (2) were violated. According to counsel, the only form of reparation in this connection consists in completely reverting the effects of the illegal acts by the State. The State in fact incurred an international obligation under which it is obliged to fully repair the authors, which takes the form of restitution, indemnification, and satisfaction, either individually or combined.

These norms have been established by different regional and universal organs and this development has been captured in the General Assembly Resolution A/RES/60/147. On the other hand, the harmonization of reparations for violations of human rights is a matter that is being recently considered by the Committee. Therefore, counsel asks the Committee to clarify to the State party that full reparation for the caused harm has to be comprehensive.

When the Committee has found in the past that property has to be returned to the victims, it has done so through the measure of satisfaction. In some cases of bad faith, however, several States parties ignored the concept of full reparation. Full reparation has to be translated into the restitution of the goods that were seized rather than mere formality. The first act of the State should therefore be the restitution of all rights and obligations of civil character that were forfeited.

Counsel requests the Committee to declare that the State party has not complied with its views and to urge the State party to provide full reparations for the violations to the victims, in particular, the restitution of property seized in violation of due process, among others, through successively arbitrary acts culminating in Legislative Decree No. 13.

Committee’s assessment:(a)full reparation: C; (b) ensuring due process is followed in the relevant suits at law: C

Committee’s decision: Follow-up dialogue ongoing.

**8. France[[7]](#footnote-7)**

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| *Communication No. 1620/2007, J.O. v. France* |

Views adopted: 23 March 2011

Violation: article 14 (2) and (5), in conjunction with article 2

Remedy: provide the author with an effective remedy, including a review of his criminal conviction and appropriate compensation.

Subject matter: allegedly abusive application of criminal procedure; imposition of a disproportionate burden of proof.

Previous follow-up CCPR/C/113/3; State party’s reply dated 31 January

information**:**

Author’s submissions: 2012, A/69/40.

On 7 March 2016 and on 10 July 2017, the author notes the continued inaction by the State party to implement the Committee’s Views and introduce legislative changes. He recalls the various steps he undertook with a view to obtaining a retrial, including his third request on 14 November 2014 before the Court of Cassation under section 622 of the Code of Penal Procedure, which allowing a retrial based on newly discovered elements, such as the Committee’s Views. However, as this provision does not provide for an automatic right to a retrial, as would have been the case with judgments of the European Court of Human Rights, the author is of the view that his application for retrial cannot be considered as an effective remedy.

In December 2015, the author’s request for a retrial was rejected by the Cour de révision, based on the conclusion that the Covenant and its Optional Protocol are not legally binding on France. According to the author, this is an obvious violation of the French Constitution, article 55, which stipulates that international treaties, when ratified, take precedence over French law. Additionally, the Court ruled that failure of the French courts to respect the presumption of innocence is not a reason to justify a retrial.

Since his criminal conviction in 2001, now more than 15 years ago, the author has failed to find a new employment as a senior finance executive, and has been without work for most of the time, only being able to find interim work.

As such, even though his criminal conviction has been expunged, the author claims that this is no comfort as his professional career has been destroyed over a period of more than 18 years, and his family life was devastated.

The author submits a letter of 21 March 2017 by the French Ministry of Foreign Affairs in response to his letter of 24 February 2017. The constant position of the State party as regards the Committee’s recommendation to have the author’s criminal conviction reviewed, remains unchanged. The State party explains that the Criminal Procedure Code does not provide for a review of final convictions on the basis of a decision by the Human Rights Committee, unlike judgements of the European Court of Human Rights, which have jurisdictional value.

On 10 July 2017, the author submits again that the State party has consistently refused to offer him an effective remedy and has confirmed repeatedly that the Committee cannot impose its recommendations on it. He urges that action is taken to prevent the State party from becoming a member of the Human Rights Council.

Committee’s assessment:(a)review of his criminal conviction and appropriate compensation: E

(b) non repetition: E

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

 **9. Ireland**

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| *Communications No. 2324/2013, Mellet v Ireland and No. 2425/2014, Whelan v. Ireland* |

Views adopted: 31 March 2016 and 17 March 2017

Violation:articles 7, 17 and 26

Remedy: Adequate compensation and provision to the author of any psychological treatment necessary. The State party should amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, 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 they will be subjected to criminal sanctions.

Subject matter:Termination of pregnancy in a foreign country/Access to termination of pregnancy

Previous follow-up information CCPR/C/119/3; CCPR/C/121/R.1 (regarding case 2324/2013, Mellet v. Ireland)

State party’s observations: 6 November 2017

The State party presented its position concerning case 2425/2014. In Ireland, termination of pregnancy is regulated by constitutional and statute law and in particular Article 40.3.3 of the Constitution, commonly known as the Eighth Amendment, reading as follows: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees by its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

In 1992, in AG v X [1992] 1 IR 1 the Supreme Court gave an authoritative judgment as to how the right to life of the pregnant woman was to be balanced against the right to life of the unborn in cases where pregnancy places the mother's life at risk. The Court held that the test to be applied was that if it was established, as a matter of probability, that there was a real and substantial risk to the life, as opposed to the health, of the mother which can only be avoided by a termination of her pregnancy, such termination is permissible.

The Protection of Life During Pregnancy Act 2013 restates the general prohibition on abortion in Ireland while regulating access to lawful termination of pregnancy in accordance with the X case and the judgment of the European Court of Human Rights in the A, B and C v Ireland case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

A foetus with a condition that is incompatible with life, but which is capable of being born alive and surviving even for a very short period, is protected by Article 40.3.3 of the Constitution. Consequently, Ireland is precluded from offering services within the State to terminate the pregnancies of women in positions similar to Ms Whelan (absent a qualifying risk to the life of the pregnant woman).

The Regulation of Information (Services outside the State for Terminations of Pregnancy) Act 1995 was passed following a referendum in 1992 which resulted in the addition of two new paragraphs to Article 40.3.3 of the Constitution. Paragraph 3 provides: “this subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.”

The 1995 Act regulates the manner in which information about services for the termination of pregnancy lawfully provided abroad could be sought and obtained in Ireland. While a health professional is precluded by the terms of the 1995 Act from advocating or promoting the termination of pregnancy, they are not in any way precluded from giving full information to a woman with regard to her state of health, the effect of the pregnancy thereon and the consequences to her health and life if the pregnancy continues; and leaving to the mother the decision whether in all the circumstances the pregnancy should be terminated. The health professional can give the pregnant woman all the information necessary to enable her to make an informed decision about her pregnancy.

In relation to health services, the Health Service Executive (HSE) published the National Standards for Bereavement Care following Pregnancy Loss and Perinatal Death in 2016.

The purpose of the Standards is to enhance bereavement care services for parents who experience a pregnancy loss or perinatal death. The Standards cover all pregnancy loss situations from early pregnancy loss to perinatal death, as well as situations where there is a diagnosis of foetal anomaly that will be life limiting or that may be fatal. These services are available to all parents who have suffered bereavement, irrespective of when the bereavement occurred.

The Standards also make it explicit that, following termination in Ireland or abroad, women, parents and families are invited to meet with the Bereavement Service Team and are afforded the same level of bereavement care that is given to families who continue their pregnancy. Access to such services may be provided within the maternity services or other community-based setting.

There are some cases where women may opt for a termination without ever having first contacted a maternity service. In these instances the women/couples may access post-abortion counselling services via the HSE Crisis Pregnancy Programme. It should be noted that post-abortion counselling services and support are also available via the HSE Crisis Pregnancy Programme network of services. Part of the targeted improvement process for the Health Service Executive will be to improve referral links between hospitals and such services.

The National Standards referred to above reiterate that women who receive a diagnosis of a fatal foetal abnormality and choose to terminate their pregnancy should be provided with up-to-date information on and contact details of services available abroad, and to clinical services as required to discuss the diagnosis.

The State party acknowledges that the lack of access in Ireland to termination of pregnancy in cases of fatal foetal abnormality is one that has caused significant distress to many like Ms Whelan. To address this situation would require a change to Article 40.3.3 of the Constitution and such a change would require careful consideration of the social, policy and legal issues involved.

The State party established a Citizens’ Assembly, in line with its Programme for a Partnership Government commitment as laid down in the programme dated May 2016, to consider a number of matters including constitutional reform. Under the Assembly’s terms of reference, it was directed to first consider the Eighth Amendment of the Constitution (Article 40.3.3) and to submit its conclusions on the matter to the Houses of the Oireachtas (the Houses of the Irish Parliament) for further debate.

Ms. Justice Mary Laffoy (Judge of the Supreme Court) chaired the Assembly, comprised of ninety-nine citizens randomly chosen from the population. The Assembly held a series of meetings to consider the Eighth Amendment of the Constitution between 15 October 2016 and 23 April 2017. During this time the Assembly gathered facts in relation to the issue, listened to experts in the medical, legal, and ethical field and to advocates’ views on the topic. The Assembly considered the issue of fatal foetal abnormalities as part of its deliberations.

The Citizens’ Assembly submitted its report on the Eighth Amendment to the Houses of the Oireachtas on 29 June 2017. It recommended that the Eighth Amendment should be replaced with a provision that explicitly authorises the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the woman. The Assembly also made recommendations on what should be included in such legislation; specifically they recommended a number of reasons for which termination of pregnancy should be lawful in Ireland and any gestational limits that should apply.

The Assembly’s report is now being considered by a special Joint Oireachtas Committee, which has been formally established by Dáil Éireann and Seanad Éireann (the two Houses of the Irish Parliament) for that purpose.

The remit of the Joint Committee on the Eighth Amendment of the Constitution is to consider the Citizens’ Assembly report and recommendations on the Eighth Amendment of the Constitution and report its conclusions and recommendations to both Houses of the Oireachtas within three months of its first public meeting, which took place on 20 September 2017. The Committee is therefore due to report on or before 20 December 2017.

The Government has agreed to hold a referendum on the Eighth Amendment to the Constitution (Article 40.3.3) in May or June 2018, subject to the timely passage of a Constitutional Amendment Bill on the matter by the Houses of the Oireachtas.

In terms of individual measures, in acknowledgement of the Committee’s views the State party has offered Ms Whelan the sum of thirty thousand euro (€30,000.00) on an ex gratia basis. In addition, the State party has directed the Health Service Executive to ensure that Ms Whelan will have timely access to all appropriate psychological services provided by the Health Service Executive. A liaison person has been appointed by the HSE in this regard and his contact details have been forwarded to Ms Whelan.

The views of the Committee have been published both on the website of the Department of Foreign Affairs and Trade and on the website of the Department of Health.

Submission 19 December 2017
from author’s counsel:

Author’s counsel submitted an update regarding measures taken by Ireland to implement the Committee’s Views in the two cases.

The update provides information on behalf of the authors on the extent to which the State party has thus far adopted the measures outlined by the Committee. This submission follows and updates the last submission to the Committee, dated 31 July 2017, regarding measures taken by the State party in the two cases.

Although the individual remedies of compensation and psychological support are important for the author, Ms. Whelan has clearly stated that the remedial measures involving law reform are indispensable to repairing and redressing the pain and suffering inflicted on her by the State party as a result of its legal prohibition on abortion. She has outlined that it was her hope in taking this case to help bring about a change in Ireland’s laws so that other women would have a choice to end their pregnancy in Ireland and not be forced to carry the pregnancy to term or to travel out of the country to access health care services as she had to.

For Ms. Whelan, remedial measures to guarantee non-repetition have always been the most important component of the reparative measures due to her under Article 2(3)(a) of the Covenant. The provision of individual remedies by the State party must not be allowed to detract from the priority placed by the author on the requisite law reform measures specified in detail by the Committee.

In November 2017, the State party took significant steps in relation to the provision of compensation to Ms. Whelan and has provided access to necessary psychological treatment. As outlined in the State party’s report to the Committee, in November 2017 the Government paid Ms. Whelan an ex gratia award of 30,000 Euro “in acknowledgment of the Committee’s Views.” The Government also instructed the Health Service Executive (HSE) to provide Ms. Whelan with access to any psychological counselling and support services that she may wish to access for such period of time as deemed necessary by Ms. Whelan and her clinician.

Counsel welcomes these important steps by the State party and considers this action, in accordance with the Committee’s own assessment criteria, to be satisfactory in complying with the State party’s obligation, as outlined by the Committee, to provide Ms. Whelan with adequate compensation and access to psychological counselling.

However, in respect of the third, pivotal aspect of its remedial obligations, the State party has not yet complied with the requirements set out by the Committee.

In its response to the Views of the Committee on the Whelan communication, the State party has reaffirmed its opinion that it is currently precluded from legalizing access to abortion in any circumstances other than where the life of a pregnant woman is subject to a real and substantial risk, and is precluded from providing termination of pregnancy services to women in Ireland, including in situations such as those which faced Ms. Whelan and Ms. Mellet, because of Article 40.3.3 of the Irish Constitution (the Eighth Amendment).

The only way in which the Constitution of Ireland can lawfully be changed is through a referendum of the electorate. The Government can ask the Irish Parliament to approve a text for Constitutional revision at any time and once there is Parliamentary approval of the text it can then be put before the electorate in a referendum. This was the mechanism by which Article 40.3.3 was introduced into the Constitution of Ireland in 1983 and this is the only way in which it can be removed.

Counsel notes that in its response to the Committee, the State party points to its establishment of a “Citizens’ Assembly” to consider possible changes to the Irish Constitution in a number of areas, including the 8th Amendment.

However, the establishment of the Citizens’ Assembly was not a result of the Whelan or Mellet decisions nor a step taken in acknowledgment of the remedial obligations set out in the Committee’s Views on those communications.

In June 2017, the Citizens’ Assembly issued its recommendations for Constitutional and legal reform to the Parliament. By majority vote (87%) it recommended that the Eighth Amendment should not be retained in full in the Constitution. The Assembly also made recommendations as to the form that future legislation on abortion should take. A clear majority (64%) voted that abortion should be legal on a woman’s request without restriction as to reason, at least in the first trimester. A clear majority also voted for the legalization of abortion in a range of additional circumstances, including risk to a woman’s health (78%), sexual assault (89%), fatal foetal impairment (89%), severe foetal impairment (80%), and for socio-economic reasons (72%).

The Citizens’ Assembly’s recommendations have since been considered by a special parliamentary committee, the Joint Oireachtas Committee on the Eighth Amendment, 6 made up of 21 members of parliament from all parties.7 On 13 December 2017, that Committee completed its deliberations and by majority vote recommended that the Eighth Amendment be repealed. It also made recommendations regarding future legalization of abortion, including on a woman’s request without restriction as to reason within 12 weeks of pregnancy, as well as in situations of risk to health and fatal foetal impairment.

While a Constitutional referendum is being discussed for the summer of 2018, the holding of the referendum must first receive Parliamentary approval. Specifically, the Government can submit a text for Constitutional revision to the Oireachtas for approval, but cannot put such text before the electorate in a referendum without prior Parliamentary approval. Furthermore, there is no obligation on the Oireachtas to accept the recommendations of the Joint Oireachtas Committee. It thus remains unclear what the terms of a referendum would be and what legislative reform would be proposed and subsequently adopted.

Consequently, many concrete steps remain before the State party can comply with the Committee’s instruction to amend the law on the voluntary termination of pregnancy, including if necessary the Constitution, in order to ensure effective, timely and accessible procedures for pregnancy termination in Ireland. It remains uncertain if relevant law reform will take place and if it does, what form it will take. Only when law reform has occurred will it be possible to assess whether the State party has effectively enacted reparative measures as outlined in the Mellet and Whelan Views. Only when Ireland’s laws ensure effective, timely and accessible procedures for pregnancy termination within Ireland, as outlined by the Committee, will the State party discharge its remedial obligations in respect of the human rights violations Ms. Whelan and Ms. Mellet endured.

In the absence of any updated information in its reply to the Committee regarding the Whelan decision on 7 November 2017, the authors’ counsels reiterate that the Government’s intention to examine the Regulation of Information Act to assess whether its provisions need to be strengthened or clarified in no way amounts to a commitment to undertake relevant legal reforms. Nor does the Government’s position indicate whether any potential future reforms would meet the requirement outlined by the Committee that measures be taken “to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions”. Counsel thus considers that the State party’s action with regard to this aspect of its remedial obligations also remains unsatisfactory.

In light of these considerations, counsel request the Committee to maintain close scrutiny of the State party’s implementation of the Views in Whelan v. Ireland and Mellet v. Ireland under the follow-up procedure until effective law reform measures that meet the requirements outlined by the Committee have been adopted.

Compensation: A

Non-repetition: B

Committee’s decision: Follow-up dialogue ongoing.

**10. Ukraine**

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| *Communication No. 1412/2005, Butovenko* |

Views adopted: 19 July 2011

Violation: article 7; article 7, read in conjunction with article 2 (3); article 9 (1); article 10 (1); and article 14 (1), (3) (b), (d), (e) and (g), of the Covenant

Remedy: the State party is under an obligation to provide the author with an effective remedy. The remedy should include a review of his conviction that would comply with fair trial guarantees of article 14 of the Covenant, impartial, effective and thorough investigation of the author’s claims under article 7, prosecution of those responsible, and full reparation, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

Subject matter: Sentence of life imprisonment after torture and unfair trial.

Previous follow-up None

information**:**

Submissions from 1 August 2017
the State party:

The State party submits that the national legislation does not provide for a review of the national courts decisions on the basis of the Committee’s Views. It refers to article 445 (1) (4) of the Criminal Procedural Code of Ukraine according to which a decision of an international court recognised by Ukraine finding that Ukraine has violated its international obligations is a ground for a Supreme Court review of the national courts decisions. In this regard, on 26 December 2011, the Supreme specialised court of Ukraine ruled out that the author’s application should be rejected, as the Committee’s Views are not court decisions for the purposes of article 445 of the Criminal Procedure Code. The author’s claim has thus been returned to him, without examination.

Author’s comments: The State party’s observations have been sent to the author, for information, on 22 February 2018.

Committee’s assessment: Review of the author’s conviction that would comply with fair trial guarantees of article 14 of the Covenant: E;

Impartial, effective and thorough investigation of the author’s claims under article 7, prosecution of those responsible: E

Full reparation, including appropriate compensation: E

Non-repetition: E

Committee’s decision: Suspend the follow-up dialogue, with a note of unsatisfactory implementation of the Committee’s recommendation

1. The full assessment criteria are available at [http://tbinternet.ohchr.org/Treaties/CCPR/
 Shared%20Documents/1\_Global/INT\_CCPR\_FGD\_8108\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/%20Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf). [↑](#footnote-ref-1)
2. The Special Rapporteur for follow-up to Views met with representatives of Algeria on 14 July 2017. The State party representative agreed to request from the Ministry of Justice follow-up observations for each individual case currently under the follow-up procedure. [↑](#footnote-ref-2)
3. A letter transmitting the State party follow-up observations was sent to the author on 19 February 2018. [↑](#footnote-ref-3)
4. The Special Rapporteur for follow-up to Views met with the State party on 18 July 2017.. [↑](#footnote-ref-4)
5. The periodic review of Cameroon took place in November 2017. See CCPR/C/CMR/CO/5. [↑](#footnote-ref-5)
6. The periodic review of the Democratic Republic of Congo took place in November 2017. Concerning Views under the Optional Protocol, see CCPR/C/COD/CO/4, para 7 and 8. [↑](#footnote-ref-6)
7. The case was also discussed during a meeting, held on 18 July 2012, between the Committee’s Special Rapporteur on Follow-up to Views and a representative of the Permanent Mission of France to the United Nations Office at Geneva. [↑](#footnote-ref-7)