

PERU

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR A/51/40, vol. I (1996)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

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Peru: Four views finding violations; two follow-up replies indicating that views were passed on to the Supreme Court for action in two cases; no follow-up replies received in two cases. Follow-up consultations conducted during the fifty-seventh session.

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434. In the case of Peru, where enabling legislation does exist, the Committee has considered whether it was appropriate to treat the complaint of the author of communication No. 203/1986 (Muñoz Hermosa v. Peru) to the effect that the Committee's views had not been implemented by the Peruvian courts as a new case under the Optional Protocol. The Committee concluded that, for the time being, the author's contention that the State party had failed to provide him with a remedy should be examined in the context of the follow-up procedure.

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Concern over instances of non-cooperation under the follow-up mandate

463. In spite of the progress in collecting follow-up information since the adoption of the last annual report, the Committee and the Special Rapporteur note with concern that a number of countries did not provide any follow-up information within the deadlines established by the Committee or have not replied to reminders or requests for information from the Special Rapporteur. The States that have not replied to requests for follow-up information are the following:

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Peru (no reply in respect of two cases);

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464. The Special Rapporteur urges these States parties to reply to his requests for follow-up information within the imparted deadlines.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

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Peru: Five Views finding violations: 202/1986 - Ato del Avellanal and 203/1986 - Munoz Hermosa (1989 Report);^{17/} 263/1987 - González del Rio and 309/1988 - Orihuela Valenzuela (1993 Report);^{15/} 540/1993 - Celis Laureano (1996 Report);^{10/} State party follow-up reply remains outstanding. Follow-up replies dated 24 September 1996 indicate that the Committee's recommendations are under review but do not suggest that concrete measures to give effect to them have been taken (see paras. 545 and 546 below).

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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545. Peru: In the case of Peru, where enabling legislation had been enacted in 1985 (see the 1996 Report of the Committee, para. 434), the Committee regrets that the Government of Peru rescinded that enabling legislation in the course of 1996. The Committee expresses regret at the State party's action and urges it to reconsider the measure. During the fifty-seventh session, the Special Rapporteur held follow-up consultations with the Minister of Justice of Peru.

546. By submission of 24 September 1996 concerning the Committee's Views on four Peruvian cases adopted between 1988 and 1992 (No. 202/1986 (Ato del Avellanal), Views adopted on 28 October 1988; No. 203/1986 (Munoz Hermosa), adopted on 4 November 1988; No. 263/1987 (González del Rio), adopted on 28 October 1992; and No. 309/1988 (Orihuela Valenzuela) adopted on 14 July 1993), the Peruvian Government indicates that it is actively investigating the authors' situation in those cases and that the Consejo Nacional de Derechos Humanos, a new body created with a view to improving respect for human rights in Peru, has been involved in attempts to find a

^{10/} [Official Records of the General Assembly], Fifty-first Session, Supplement No. 40 (A/51/40).

^{15/} Ibid., Forty-eighth Session, Supplement No. 40 (A/48/40).

^{17/} Ibid., Forty-fourth Session, Supplement No. 40 (A/44/40).

solution to those cases. However, the State party does not explain what concrete measures, if any, it has adopted to implement the Committee's recommendations in those cases.

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Concern over instances of non-cooperation under the follow-up mandate

554. In spite of some progress in collecting follow-up information since the adoption of its 1996 Report, the Committee and the Special Rapporteur note with concern that a number of countries did not provide any follow-up information within the deadlines established by the Committee or have not replied to reminders or requests for information from the Special Rapporteur. Those States which have not replied to requests for follow-up information are the following (in alphabetical order):

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Peru: one case;

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555. The Committee urges those States parties to reply to the Special Rapporteur's requests for follow-up information within the deadlines that have been set.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

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Peru: Six Views finding violations: for four cases, see 1997 Report (A/52/40), paras. 524, 545-546; 540/1993 - Celis Laureano (1996 Report (A/51/40)); State party's follow-up reply remains outstanding; 577/1994 (Polay) (annex XI, section F); State party's follow-up replies, dated 14 April and 2 June 1998.

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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498. Peru. In submissions, dated 14 April and 2 June 1998, Peru provided information in relation to the Committee's Views in case No. 577/1994 (Polay Campos). The State party contests the Committee's findings of violations in Mr. Polay Campos' case. In respect of the Committee's recommendation that Mr. Polay Campos be retried in compliance with the requirements of fair trial set forth in the Covenant, the State party submits that a sentence can be reviewed by an extraordinary appeal measure, the recourse of revision foreseen in article 361 of the Code of Criminal Procedure. An application for revision has to be filed by the accused, or by his relatives, with the Supreme Court together with the documents justifying the revision. The Supreme Court has the power to annul the imposed sentence and order a retrial.

VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

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Peru: Six Views finding violations: for four cases, see A/52/40, paras. 524, 545-546; 540/1993 - Laureano (A/51/40); State party's follow-up reply remains outstanding; 577/1994 - Espinoza de Polay (A/53/40); for State party's follow-up replies, see A/53/40, para. 498.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

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Peru: Six Views finding violations: 202/1986 - Ato del Avellanal (A/44/40); 203/1986 - Muñoz Hermosa (A/44/40); 263/1987 - González del Río (A/48/40); 309/1988 - Orihuela Valenzuela (A/48/40); for the follow-up reply in these four cases, see A/52/40 para. 546; 540/1993 - Laureano (A/51/40); the State party's follow-up reply remains outstanding; 577/1994 - Polay Campos (A/53/40); for the State party's follow-up reply, see A/53/40, para. 498.

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Peru: Six Views finding violations: 202/1986 - Ato del Avellanal (A/44/40); 203/1986 - Muñoz Hermosa (A/44/40); 263/1987 - González del Río (A/48/40); 309/1988 - Orihuela Valenzuela (A/48/40); for follow-up reply in these four cases, see A/52/40 paragraph 546; 540/1993 - Laureano (A/51/40); follow-up reply remains outstanding; 577/1994 - Polay Campos (A/53/40); for follow-up reply, see A/53/40, paragraph 498.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

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193. Peru: With regard to case No. 202/1986 - Ato (A/44/40), the author informed the Committee by letters dated 1 October 1999 and 15 March 2001 that the State party had not implemented the Views.

194. Follow-up consultations were held during the fifty-seventh and seventieth sessions. Despite State party information about the activities of the "Consejo Nacional de Derechos Humanos", no concrete action appears to have been taken to implement the Committee's recommendations. The Special Rapporteur met with a representative of Peru on 24 October 2000, who said that the law had been changed and information would be provided in writing. The information has not been received.

195. With regard to case No. 203/1986 - Muñoz, the State party orally informed the Committee during the seventieth session that a remedy had been granted to the author. Written confirmation of this information and clarification of the nature of the remedy granted has not been provided.

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Peru: Views in eight cases with findings of violations:

202/1986 - Ato del Avellanal (A/44/40); see paragraph [247] below;

203/1986 - Muñoz Hermosa (A/44/40);

263/1987 - González del Río (A/48/40);

309/1988 - Orihuela Valenzuela (A/48/40); for follow-up reply in these four cases, see A/52/40 paragraph 546;

540/1993 - Laureano (A/51/40); follow-up reply remains outstanding;

577/1994 - Polay Campos (A/53/40); for follow-up reply, see A/53/40, paragraph 498;

678/1996 - Gutierrez Vivanco (annex IX); follow-up reply not yet due;

906/1999 - Chira Vargas (annex IX); follow-up reply not yet due;

The Special Rapporteur held consultations with representatives of the State party at the seventy-fourth session, who undertook to inform the capital and report to the Committee. No information has yet been received from the State party.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular

A/56/40, paragraphs 182 to 200.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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247. Peru: With regard to case No. 202/1986 - Ato del Avellanal (A/44/40), the author informed the Committee by letters dated 15 November 2001, 3 December 2001, 3 January 2002, 22 April 2002, 15 May 2002 [and 1 June 2002] that the State party had still not implemented the Committee's Views.

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CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases.

In many cases there has been no change since the previous report.*

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Peru: Views in nine cases with findings of violations:

202/1986 - *Ato del Avellanal* (A/44/40); see paragraph 243 below;

203/1986 - *Muñoz Hermosa* (A/44/40);

263/1987 - *González del Río* (A/48/40);

309/1988 - *Orihuela Valenzuela* (A/48/40); for follow-up reply in these four cases, see A/52/40, paragraph 546;

540/1993 - *Celis Laureano* (A/51/40); follow-up reply remains outstanding;

577/1994 - *Polay Campos* (A/53/40); for follow-up reply, see A/53/40, paragraph 498;

678/1996 - *Gutierrez Vivanco* (A/57/40); for follow-up reply, see paragraph 244 below;

688/1996 - *de Arguedas* (A/55/40); for follow-up reply see paragraph 245 below;

906/1999 - *Chira Vargas-Machuca* (A/57/40); for follow-up reply, see paragraph 244 below;

At the seventy-fourth session the Special Rapporteur held consultations with representatives of the State party, who undertook to inform the capital and report to the Committee. No subsequent information has been received.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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243. **Peru:** case No. 202/1986 - *Ato del Avellanal* (A/44/40): the author informed the Committee, by letters of 15 August, 16 and 30 September, 15 and 27 October and 30 November 2002, that the State party had still not implemented the Committee's Views.

244. Cases Nos. 678/1996 - *Gutiérrez Vivanco* (A/57/40) and 906/2000 - *Chira Vargas-Machuca*: the State party, by note verbale of 1 October 2002, requested an extension of the 90 days for the submission of its follow-up replies. No further submission has been received since then.

245. Case No. 688/1996 - *de Arguedas* (A/55/40): on 11 December 2002, the State party informed the Committee that further to a decision of Criminal Court 28 of Lima, the author was released on 6 December 2002.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40(A/57/40)*, vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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PERU:

Ato del Avellanal v. Peru, Case no. 202/1986, Views adopted on 28 October 1988

Violations found: Articles 3, 14, paragraph 1 and 26.

Issues of case: Discrimination on ground of sex

Remedy recommended: To take effective measures to remedy the violations suffered by the victim

Deadline for State party follow-up information: 9 June 1989

Follow-up information received from State party: See previous Follow-up report of 20 March 2001 (CCPR/C/71/R.13) or the Committee's Annual Report (A/56/40, Vol.1, para.194).

Follow-up information received from author: In numerous letters between 1 October 1999 and 31 July 2003, the author informed the Committee that the State party had still not implemented the Views and requested the Committee to intercede.

Consultations with State party: As referred to in the previous follow-up report (CCPR/C/71/R.13) and the Committee's Annual Report (A/56/40, Vol.1, para.194), the Special Rapporteur met with a representative of Peru on 24 October 2000. The Delegate indicated that the law had been changed and would provide information in writing.

Special Rapporteur's recommendations: A further follow-up consultation with the State party should be arranged.

Mu oz Hermoza v. Peru, Case no. 203/1986, Views adopted on 4 November 1998

Violations found: Article 14, paragraph 1

Issues of case: Denial of reinstatement of ex-sergeant to his post, unduly prolonged judicial proceedings

Remedy recommended: Adequate compensation to the author.

Deadline for State party follow-up information: 11 June 1991

Follow-up information received from State party: In follow-up consultations held during the 79th session, the State party orally informed the Committee that a remedy had been granted to the author. Written confirmation of this information and clarification of the nature of the remedy granted has not been provided.

Follow-up information received from author: See previous follow-up report (CCPR/C/71/R.13).

Special Rapporteur's recommendations: Another follow-up consultation with the State party should be arranged.

Gutiérrez Vivanco v. Peru, Case no. 678/1996, Views adopted on 26 March 2002

Violations found: Article 14, paragraphs 1 and 3(c)

Issues of case: Charges for terrorism; trial before court of "faceless" judges.

Remedy recommended: Compensation

Deadline for State party follow-up information: 23 September 2002

Follow-up information received from State party: By note verbale of 1 October 2002, the State party requested an extension of the 90 days deadline to provide information on follow-up. No further information received.

Follow-up information received from author: None

Special Rapporteur's recommendations: A follow-up consultation with the State party should be arranged.

Arredondo v. Peru, Case no. 688/1996, Views adopted on 27 July 2000

Violations found: Articles 9, paragraph 1, 10, paragraph 1; article 14, paragraphs 1, and 3(c)

Issues of case: Arbitrary arrest, undue delay in proceedings, unfair trial, inhuman conditions of detention

Remedy recommended: The Committee considered that Ms. Arredondo should be released and adequately compensated.

Deadline for State party follow-up information: 24 September 2000

Follow-up information received from State party: By note verbale of 16 December 2002, the State party informed the Committee that by decision of the 28th Criminal Judge of Lima, the author was released on 6 December 2002.

Follow-up information received from author: The author informed the Committee, by letter of 2 July 2002, that the State Party did not implement the Committee's Views and that Mrs. Arredondo remains in prison.

Special Rapporteur's recommendations: The author should be requested to comment on the State party's submission of 16 December 2002.

Vargas Machuca v. Peru, Case no. 906/2000, Views adopted on 22 July 2002

Violations found: Article 25 (c), read together with article 2, paragraph 3.

Issues of case: Unfair trial; access to public service

Remedy recommended: Effective reinstatement of the author to his duties and to his post, with all the consequences that that implies, at the rank that he would have held had he not been dismissed in 1991, or to a similar post; compensation comprising a sum equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which he was not reinstated to his post.

Deadline for State party follow-up information: 11 November 2002

Follow-up information received from State party: By note verbale of 1 October 2002, the State party requested an extension of the 90 days for the submission of its follow-up replies. No further submission since then.

Follow-up information received from author: The author informed the Committee, by letter of 29 November 2002, that in spite of all the steps he has taken with the Ministry of Foreign Affairs of Peru and the National Counsel of Human Rights of the Justice Ministry (Consejo Nacional de Derechos Humanos del Ministerio de Justicia-Lima), the Committee's Views have not been implemented. He has not been reinstated in his military position, nor received compensation. He requested the Peruvian authorities to award him the grade of Lieutenant Colonel, which would correspond to his 17 years of army service. The author provides expert evidence which evaluates his damages at 452,344.58 new soles in terms of lost remuneration, and 100,000 dollars for

court costs. By letter of 23 August 2003, the author reiterated that the State party had not implemented the Views.

Special Rapporteur's recommendations: A follow-up consultation with the State party should be arranged.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Peru: Views in 10 cases with findings of violations:

202/1986 - *Ato del Avellanal* (A/44/40); see A/58/40, paragraph 243;

203/1986 - *Muñoz Hermosa* (A/44/40);

263/1987 - *González del Río* (A/48/40);

309/1988 - *Orihuela Valenzuela* (A/48/40); for follow-up reply in these four cases, see A/52/40, paragraph 546;

540/1993 - *Celis Laureano* (A/51/40); follow-up reply remains outstanding;

577/1994 - *Polay Campos* (A/53/40); for follow-up reply, see A/53/40, paragraph 498;

678/1996 - *Gutierrez Vivanco* (A/57/40); for follow-up reply, see A/58/40, paragraph 244;

688/1996 - *de Arguedas* (A/55/40); for follow-up reply see A/58/40, paragraph 245;

906/1999 - *Chira Vargas-Machuca* (A/57/40); for follow-up reply, see A/58/40, paragraph 244;

981/2001 - *Gomez Casafranca* (A/58/40); follow-up reply not yet received.

At the seventy-fourth and eightieth sessions the Special Rapporteur held consultations with representatives of the State party, who undertook to inform the capital and report to the Committee. No subsequent

information has been received.

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Peru (10)	202/1986, <i>Ato del Avellanal</i> A/44/40	X A/52/40, A/59/40				X
	203/1986, <i>Muñoz Hermosa</i> A/44/40	X A/52/40, A/59/40				X
	263/1987, <i>González del Río</i> A/48/40	X A/52/40, A/59/40				X
	309/1988, <i>Orihuela Valenzuela</i> A/48/40	X A/52/40, A/59/40				X
	540/1993, <i>Celis Laureano</i> A/51/40				X A/59/40	X
	577/1994, <i>Polay Campos</i> A/53/40	X A/53/40, A/59/40				X
	678/1996, <i>Gutierrez Vivanco</i> A/57/40				X A/58/40, A/59/40	X
	688/1996, <i>de Arguedas</i> A/55/40	X A/58/40, A/59/40	X			
	906/1999, <i>Vargas-Machuca</i> A/57/40				X A/58/40, A/59/40	X
	981/2001, <i>Gomez Casafranca</i> A/58/40				X A/59/40	X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

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**FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)**

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

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30. Mr. ANDO said... The Peruvian Government had recently become more cooperative in responding to the Committee. The author's response in Quispe Roque v. Peru (communication No. 1125/2002) would be amended, since a response had not yet been received. The Committee was still waiting for updated information on Llantoy Huaman v. Peru (communication No. 1153/2003).

31. Mr. SOLARI YRIGOYEN said that in the report on Vargas Mas v. Peru (communication No. 1058/2002), the third paragraph of the section entitled "Further action taken or required" referred to the Llantoy Huaman v. Peru case, and should therefore be moved to the part of the report that addressed the relevant communication (No. 1153/2003).

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Peru (14)	202/1986, <i>Ato del Avellanal</i> A/44/40	X A/52/40, A/59/40				X
	203/1986, <i>Muñoz Hermosa</i> A/44/40	X A/52/40, A/59/40				X
	263/1987, <i>González del Río</i> A/48/40	X A/52/40, A/59/40				X
	309/1988, <i>Orihuela Valenzuela</i> A/48/40	X A/52/40, A/59/40				X
	540/1993, <i>Celis Laureano</i> A/51/40				X A/59/40	X
	577/1994, <i>Polay Campos</i> A/53/40	X A/53/40, A/59/40				X
	678/1996, <i>Gutierrez Vivanco</i> A/57/40				X A/58/40, A/59/40	X
	688/1996, <i>de Arguedas</i>	X	X			

	A/55/40	A/58/40, A/59/40				
	906/1999, <i>Vargas-Machuca</i> A/57/40				X A/58/40, A/59/40	X
	981/2001, <i>Gomez Casafranca</i> A/58/40				X A/59/40	X
	1125/2002, <i>Quispe</i> A/61/40	X A/61/40				
	1126/2002, <i>Carranza</i> A/61/40	X A/61/40				
	1153/2003, <i>Huaman</i> A/61/40	X A/61/40				
	1058/2002, <i>Vargas</i> A/61/40	X A/61/40				
...						

...

Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

<i>State party</i>	<i>PERU</i>
<i>Case</i>	Vargas Mas, 1058/2002
<i>Views adopted on</i>	26 October 2005
<i>Issues and violations found</i>	Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - Articles 7, 9, paragraph 1, 10, paragraph 1, and 14 of the Covenant.
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy and appropriate compensation. In the light of the long period he has already spent in detention, the State party should give serious consideration to terminating his deprivations of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for State party response</i>	6 February 2006
<i>Date of State party's response</i>	25 May 2006
<i>State party response</i>	The State party informs the Committee that a new trial is under way (in accordance with its obligation to provide an effective remedy). It notes, however, that it is for the Judiciary to determine whether the complainant can be released pending the adoption of a new

decision.

Author's response

None

Further action taken

On 3 May 2006 (during the session of the Committee against Torture), a member of the Secretariat had an informal meeting with Mr. José Burneo, Executive Secretary of the National Human Rights Council of Peru and Mr. Patricio Rubio, legal advisor at the Human Rights Directorate of the Ministry for Foreign Affairs. Messrs. Burneo and Rubio were in Geneva for the examination of Peru's periodic report to CAT. The purpose of the meeting was to transmit the HRC's concern at the lack of response from the State party to the Committee's Views.

Mr. Burneo said that his Office was in charge of coordinating the responses to the International bodies on individual complaints. However, in view of the huge amount of cases pending before the Inter-American Commission (about 1500) and the peremptory deadlines they are subjected to, his Office tends to give priority to them.

He would nevertheless look into the Committee's Views (copy of which I gave to him) and try to prepare a response.

Regarding the *K.N.L.H.* case, he said that the absence of response was deliberate, as the question of abortion was extremely sensitive in the country. His Office was nevertheless thinking of drafting a bill allowing the interruption of pregnancy in cases of anencephalic foetus.

Mr. Burneo referred to the question of reparation regarding cases of persons who have been found innocent after being sentenced under the Anti-terrorist decrees, a lot of whom have spent many years in prison. Some of the cases dealt with by the Committee fall in this category. Mr. Burneo said that the existing legislation was unsatisfactory to deal with this issue and, as a result, no compensation or other forms of reparation was provided to the victims.

Case

Quispe Roque, 1125/2002

Views adopted on

21 October 2005

Issues and violations found

Arbitrary detention, faceless judges - Articles 9, and 14

<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period that he has already spent in prison and the nature of the acts of which he is accused, the State party should consider the possibility of terminating his deprivation of liberty, pending the outcome of the current proceedings against him. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for State party response</i>	1 February 2006
<i>Date of State party's response</i>	25 May 2006
<i>State party response</i>	The State party informs the Committee that a new trial is under way (in accordance with its obligation to provide an effective remedy). It notes, however, that it is for the Judiciary to determine whether the complainant can be released pending the adoption of a new decision.
<i>Author's response</i>	None
<i>Further action taken</i>	See summary of consultations with the State party above.
<i>Case</i>	Carranza Alegre, Marlem, 1126/2002
<i>Views adopted on</i>	28 October 2005
<i>Issues and violations found</i>	Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - Articles 2 , paragraph 1, 7, 9, 10, and 14.
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period she has already spent in detention and the nature of the acts of which she stands accused, the State party should give serious consideration to terminating her deprivation of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for State party response</i>	6 February 2006

<i>Date of State party's response</i>	25 May 2006
<i>State party response</i>	The State party informs the Committee that the author was acquitted by decision of the Supreme Court of 17 November 2005 and released. It noted that the "Consejo Nacional de Derechos Humanos" (national human rights council) was currently examining the granting of a compensation.
<i>Author's response</i>	By letters dated 13 February and 8 May 2006 the author informed the Committee that on 17 November 2005 the Supreme Court decided her acquittal and that she has been released. She intends to contact the Ministry of Justice in connection with the Committee's recommendation that she should be provided with compensation.
<i>Further action taken</i>	See summary of consultations with State party above.
<i>Case</i>	K.N.L.H, 1153/2003
<i>Views adopted on</i>	24 October 2005
<i>Issues and violations found</i>	Abortion, right to a remedy, inhuman and degrading treatment and arbitrary interference in one's private life, protection of a minor - Articles. 2, 7, 17, 24.
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy, including compensation. The State party has an obligation to take steps to ensure that similar violations do not occur in the future.
<i>Due date for State party response</i>	9 February 2006
<i>Date of State party's response</i>	7 March 2006
<i>State party response</i>	Publication of a Report by the national human rights Council (Consejo Nacional de Derechos Humanos), based on the <i>K.N.L.H</i> case. The report proposes the amendment of articles 119 and 120 of the Peruvian Criminal Code or the enactment of a special law regulating therapeutic abortion. The National human rights council has required the Health Ministry to provide information as to whether the author has been compensated and granted an effective remedy. No such information

results from the letters sent by the Health Ministry in reply to the National Human Rights Council.

Further action taken See summary of consultations with State party above.

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up

replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

<i>State party and number of cases with violation</i> ...	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
Peru (14)	202/1986, <i>Ato del Avellanal</i> A/44/40	X A/52/40, A/59/40				X
	203/1986, <i>Muñoz Hermosa</i> A/44/40	X A/52/40, A/59/40				X
	263/1987, <i>González del Río</i> A/48/40	X A/52/40, A/59/40				X
	309/1988, <i>Orihuela Valenzuela</i> A/48/40	X A/52/40, A/59/40				X
	540/1993, <i>Celis Laureano</i> A/51/40				X A/59/40	X
	577/1994, <i>Polay Campos</i> A/53/40	X A/53/40, A/59/40				X
	678/1996, <i>Gutierrez Vivanco</i> A/57/40				X A/58/40, A/59/40	X
	688/1996, <i>de Arguedas</i> A/55/40	X A/58/40, A/59/40	X			
	906/1999, <i>Vargas-Machuca</i>				X A/58/40,	X

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	A/57/40				A/59/40	
	981/2001, <i>Gomez Casafranca</i> A/58/40				X A/59/40	X
	1125/2002, <i>Quispe</i> A/61/40	X A/61/40				X
	1126/2002, <i>Carranza</i> A/61/40	X A/61/40				X
	1153/2003, <i>Huaman</i> A/61/40	X A/61/40				X
	1058/2002, <i>Vargas</i> A/61/40	X A/61/40				X
...						

CCPR, CCPR/C/SR.2480 (2007)

HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2480th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 26 July 2007, at 3 p.m.

...

**FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)**

Report of the Special Rapporteur for follow-up on Views (CCPR/C/90/R.4, distributed in the meeting room in English only)

6. The CHAIRPERSON invited the Special Rapporteur to present his report.

7. Mr. SHEARER (Special Rapporteur for follow-up on Views) said that the report covered communications for which the Committee had received information between its eighty ninth session (12-30 March 2007) and its ninetieth session (9-27 July 2007)...

...

13. As regards K.N.L.H. v. Peru (communication No. 1153/2003), on 9 August 2006, the Committee had requested the State party to provide updated information on implementation of its Views, but had received no response. On 20 April 2007, the Committee had asked the State party to recognize explicitly the existence of violations of the relevant articles of the Covenant and to provide the author with compensation. The Special Rapporteur suggested that the Committee should wait for a response from the State party before taking any further action, and return to the case at its next session.

...

15. The CHAIRPERSON invited members of the Committee to ask questions concerning the cases.

16. Mr. O'FLAHERTY, referring to the K.N.L.H. v. Peru case, said that it should be specified that the Centre for Reproductive Rights was representing the author, and was not just a non governmental organization whose comments would be reproduced by the Committee. Moreover, the Committee should verify the amount of compensation.

17. Mr. KÄLIN said that ... Rather than ask the parties to "continue their efforts" to find a solution to the authors' claims, the Committee should urge them to "resume negotiations immediately". With regard to the K.N.L.H. case, he wished to know how much additional time

past the deadline States parties were generally given to submit their comments.

18. Mr. SHEARER (Special Rapporteur for follow-up on Views) approved the changes proposed by Mr. O'Flaherty... With regard to additional time granted to States parties, he said that, in general, the Committee demonstrated a certain degree of tolerance towards countries that lacked resources. While that situation was not particularly relevant to Peru, the Peruvian Government was probably embarrassed about the case, which was rather sensitive, and was unlikely to respond. It was therefore in the Committee's interest to encourage the State party by giving it more time to respond.

19. The CHAIRPERSON thanked the Special Rapporteur for his report on a very important aspect of the Committee's work. If he heard no objection, he would take it that the Committee wished to adopt the report.

20. It was so decided.

...

Annex IX

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/61/40).

...

<i>State party</i>	<i>PERU</i>
<i>Case</i>	Avellanal, 202/1986
<i>Views adopted on</i>	28 October 1998
<i>Issues and violations found</i>	No standing of wife in court procedure over property - articles 3, 14 paragraph 1, 26.
<i>Remedy recommended</i>	The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victim. In this connection, the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23506, to co-operate with the Human Rights Committee, and to implement its recommendations.
<i>Due date for State party response</i>	12 June 1991
<i>Date of reply</i>	None
<i>State party response</i>	N/A
<i>Author's response</i>	On 31 August 2006, the author again informed the Committee that the State party had not implemented the Decision.
<i>Case</i>	Carranza Alegre, Marlem, 1126/2002

<i>Views adopted on</i>	28 October 2005
<i>Issues and violations found</i>	Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - Articles 2, paragraph 1, 7, 9, 10, and 14.
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period she has already spent in detention and the nature of the acts of which she stands accused, the State party should give serious consideration to terminating her deprivation of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for State party response</i>	6 February 2006
<i>Date of State party response</i>	25 May 2006
<i>State party response</i>	The Committee will recall that in the interim follow-up report of the eighty-seventh session the State party's response was set out. It informed the Committee that the author was acquitted by decision of the Supreme Court of 17 November 2005 and released. It noted that the "Consejo Nacional de Derechos Humanos" (National Human Rights Council) was currently examining the granting of compensation. By letter of 23 August and 15 September 2006, the State party informs the Committee that the amount of compensation is still under consideration.
<i>Author's response</i>	<p>By letters dated 13 February and 8 May 2006 the author confirmed that on 17 November 2005 the Supreme Court decided in favour of her acquittal and that she has been released. She intends to contact the Ministry of Justice in connection with the Committee's recommendation that she should be provided with compensation.</p> <p>By letter of 30 June 2006, the author notes that 6 months have elapsed since the report issued by the "Consejo Nacional de Derechos Humanos" and that the State party has not yet fully complied with the Committee's views. She notes that she has not</p>

been offered the right to return to her job, nor has she been compensated. The Consejo Nacional de Derechos Humanos has not even heard her claims.

<i>Case</i>	K.N.L.H, 1153/2003
<i>Views adopted on</i>	24 October 2005
<i>Issues and violations found</i>	Abortion, right to a remedy, inhuman and degrading treatment and arbitrary interference in ones private life, protection of a minor - Articles 2, 7, 17, 24.
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy, including compensation. The State party has an obligation to take steps to ensure that similar violations do not occur in the future.
<i>Due date for State party response</i>	9 February 2006
<i>Date of State party response</i>	7 March 2006
<i>State party response</i>	<p>The Committee will recall that as set out in the Annual Report A/61/40, the State party had informed it of the publication of a Report by the National Human Rights Council (Consejo Nacional de Derechos Humanos), based on the K.N.L.H. case. The report proposed the amendment of articles 119 and 120 of the Peruvian Criminal Code or the enactment of a special law regulating therapeutic abortion. The National Human Rights Council had required the Ministry of Health to provide information as to whether the author had been compensated and granted an effective remedy. No such information was provided in the letters sent by the Health Ministry in reply to the National Human Rights Council.</p> <p>The Committee will also recall that during the consultations with the State party on 3 May 2006, Mr. José Burneo, Executive Secretary of the National Human Rights Council of Peru, said that the absence of a response was deliberate, as the question of abortion was extremely sensitive in the country. His Office was</p>

nevertheless thinking of drafting a bill allowing the interruption of pregnancy in cases of fetuses born anencephalic.

Author's response

By letter of 16 June 2006, the Centre for Reproductive Rights had contended that by failing to provide the complainant with an effective remedy, including compensation, it had failed to comply with the Committee's decision.

On 6 March 2007, the author informed the Committee that the new government has continued to question the Committee's views. On 1 December 2006, the author met with representatives of the Human Rights Council (Consejo Nacional de Derechos Humanos) who also spoke for the Ministry of Justice. In that meeting, the State party's representatives explained that the State was willing to comply with the Committee's view. However, the author considers that the government's proposed action, which would consist in the payment of \$10,000 in compensation as well as the introduction of a proposal to amend legislation in order to decriminalize abortions in cases of anencephalic fetuses, to be insufficient. The author expresses dissatisfaction with the fact that compensation would reportedly be made only in relation to the violation of article 24 of the Covenant, as the State Party's representatives allegedly indicated that they considered that there had been no violation of other articles of the Covenant. The author refers to statements made by representatives from the State Party that allegedly questioned the existence of violations of article 2, 7 and 17 of the Covenant. Moreover, the author maintains that the proposed change in legislation presupposes that the Committee was mistaken in its analysis. The author contends that, in fact, such legislative change is unnecessary as therapeutic abortion already exists in Peru and should be interpreted in accordance with international standards to include cases where the foetus is anencephalic.

The author recalls that the Constitutional Court of Peru (Tribunal Constitucional Peruano) has considered that the Committee's views are definitive international judicial decisions that must be complied with and executed in accordance with article 40° of Law No. 23506 and article 101° of the Constitution.²

The author asks that the Committee request the State to recognize explicitly the existence of violations of article 2, 7 and 17 of the

Covenant. The author also requests that a discussion on the concept of an effective remedy be initiated. To this end the author provided, in annex, a detailed proposal for reparations totalling \$96,000 (the proposal includes \$850 for payment of expenses such as the birth and baby's burial, \$10,400 for psychological rehabilitation, \$10,000 for diagnostic and treatment of physical consequences, \$50,000,000 for moral damages and \$25,000 for "life project" (lost opportunities). Finally, the author asks that a meeting be held with representatives of the State Party and the organizations representing the author so as to ensure that adequate measures are taken for the non-repetition of the violations denounced. The State Party should retract its proposal in which women seeking a therapeutic abortion must seek a judicial authorization.

...

...

2/ Tribunal Constitucional Peruano, *En la acción de amparo por Rubén Toribio Muñoz Hermoza*, EXP.No. 012-95-AA/TC. The authors also refer to a decision by the same court in 105 2001-AC/TC.

CCPR, CCPR/C/SR.2533 (2008)

Human Rights Committee
Ninety-second session

Summary record of the 2533rd meeting
Held at Headquarters, New York,
on Wednesday, 2 April 2008, at 11 a.m.

...

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/92/R.5)

34. Mr. Shearer (Special Rapporteur for follow-up on Views) introduced his progress report (CCPR/C/92/R.5), which compiled information received since the ninety-first session of the Committee.

...

40. Mr. O'Flaherty, referring to the case of *K.N.L.H. v. Peru* (Communication No. 1153/2003), said the fact that the State party had dealt with the specific complaint of the author and had provided compensation as a remedy should be considered sufficient. It was not, nor should it be, the Committee's policy to demand systemic changes in the context of communications.

41. Mr. Shearer said he agreed with Mr. O'Flaherty and suggested that the Committee should consider the dialogue closed, with no further action required by the State party.

42. *The recommendations contained in the progress report of the Special Rapporteur for follow-up on Views, as amended, were approved.*

The meeting rose at 1.05 p.m.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special

Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Peru (14)	202/1986, <i>Ato del Avellanal</i> A/44/40	X A/52/40, A/59/40 A/62/40 and A/63/40				X
	203/1986, <i>Muñoz Hermosa</i> A/44/40	X A/52/40, A/59/40				X
	263/1987, <i>González del Río</i> A/48/40	X A/52/40, A/59/40				X
	309/1988, <i>Orihuela Valenzuela</i> A/48/40	X A/52/40, A/59/40				X
	540/1993, <i>Celis Laureano</i> A/51/40				X A/59/40	X
	577/1994, <i>Polay Campos</i> A/53/40	X A/53/40, A/59/40				X
	678/1996, <i>Gutiérrez Vivanco</i> A/57/40				X A/58/40, A/59/40	X

	688/1996, <i>de Arguedas</i> A/55/40	XA/58/40, A/59/40	X			
	906/1999, <i>Vargas-Machuca</i> A/57/40				X A/58/40, A/59/40	X
	981/2001, <i>Gómez Casafranca</i> A/58/40				X A/59/40	X
	1125/2002, <i>Quispe</i> A/61/40	X A/61/40				X
Peru (<i>cont'd</i>)	1126/2002, <i>Carranza</i> A/61/40	X A/61/40, A/62/40				X
	1153/2003, <i>K.N.L.H.</i> A/61/40	X A/61/40, A/62/40 and A/63/40				X
	1058/2002, <i>Vargas</i> A/61/40	X A/61/40 and A/62/40				X
...						

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

<i>State party</i>	<i>PERU</i>
<i>Case</i>	<i>Avellanal, 202/1986</i>
<i>Views adopted on</i>	28 October 1988
<i>Issues and violations found</i>	No standing of wife in court procedure over property - articles 3, 14, paragraph 1, 26.
<i>Remedy recommended</i>	Take effective measures to remedy the violations.
<i>Due date for State party response</i>	12 June 1991
<i>Date of reply</i>	None
<i>State party response</i>	None
<i>Author's comments</i>	Letters dated 30 March 2007, 4 June 2007 and 3 August 2007 were received by the Committee in which the author complains about the Committee's inability to secure implementation of its Views.
<i>Committee's Decision</i>	The Committee regrets the State party's lack of response and considers the dialogue ongoing.
<i>Case</i>	K.N.L.H., 1153/2003

Views adopted on 38648

Issues and violations found Abortion, right to a remedy, inhuman and degrading treatment and arbitrary interference in one's private life, protection of a minor - articles 2, 7, 17, 24.

Remedy recommended In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy, including compensation. The State party has an obligation to take steps to ensure that similar violations do not occur in the future.

Due date for State party response 9 February 2006

Date of State party response 38782

State party response The Committee will recall that as set out in its annual report A/61/40, the State party had informed it of the publication of a report by the National Human Rights Council (Consejo Nacional de Derechos Humanos), based on the K.N.L.H. case. The report proposed the amendment of articles 119 and 120 of the Peruvian Criminal Code or the enactment of a special law regulating therapeutic abortion. The National Human Rights Council had required the Ministry of Health to provide information as to whether the author had been compensated and granted an effective remedy. No such information was provided in the letters sent by the Health Ministry in reply to the National Human Rights Council.

The Committee will also recall that during consultations with the State party on 3 May 2006, Mr. José Burneo, Executive Secretary of the National Human Rights Council of Peru, said that the absence of a response was deliberate, as the question of abortion was extremely sensitive in the country. His office was nevertheless thinking of drafting a bill allowing the interruption of pregnancy in cases of anencephalic fetuses.

Author's response By letter of 16 June 2006, the Centre for Reproductive Rights (which represents the author) had contended that by failing to

provide the complainant with an effective remedy, including compensation, it had failed to comply with the Committee's decision.

On 6 March 2007, the author informed the Committee that the new Government has continued to question the Committee's Views. On 1 December 2006, the author met with representatives of the National Human Rights Council who also spoke for the Ministry of Justice. In that meeting, the State party's representatives explained that the State was willing to comply with the Committee's view. However, the author considered that the Government's proposed action, which would consist in the payment of \$10,000 dollars in compensation as well as the introduction of a proposal to amend legislation in order to decriminalize abortions in cases of anencephalic fetuses, to be insufficient. Compensation would reportedly be made only in relation to the violation of article 24 of the Covenant, as the State party's representatives allegedly indicated that they considered that there had been no violation of other articles of the Covenant. She contended that, in fact, such legislative change is unnecessary as therapeutic abortion already exists in Peru and should be interpreted in accordance with international standards to include cases where the foetus is anencephalic.

The author recalled that the Constitutional Court of Peru (Tribunal Constitucional Peruano) has considered that the Committee's Views are definitive international judicial decisions that must be complied with and executed in accordance with article 40^o of Law No. 23506 and article 101^o of the Constitution.¹

She provides a detailed proposal for reparations totalling \$96,000 dollars (the proposal includes \$850 dollars for payment of expenses such as the birth and baby's burial, \$10,400 dollars for psychological rehabilitation, \$10,000 dollars for diagnostic and treatment of physical consequences, \$50,000 dollars for moral damages and \$25,000 for "life project" (lost opportunities). The State party should retract its proposal in which women seeking a therapeutic abortion must seek judicial authorization.

On 7 January 2008, the author submits that there are currently no technical guidelines or procedures regarding the voluntary termination of pregnancy that could provide guidance to women and doctors, at the national level, on how to terminate a pregnancy for medical reasons. The Ministry of Health has

prepared a proposal, which was submitted to the Cabinet in May 2007, for their review and advice. Those guidelines are currently with the Minister of Health, but according to the author, there is a lack of political will to approve them. The State party has not taken any measures to allow women to have safe therapeutic abortions. It has made changes to the Penal Code, allowing for therapeutic abortion in case of anencephaly, but not for other reasons that also may cause harm to women's mental health. The author has not accepted the offer of \$10,000 made to her, as: (1) Peru has not accepted responsibility in relation to violations of articles 2, 7 and 17 of the Covenant and (2) The compensation offered is not commensurate with the damage caused. The State party has not yet published the Views.

Committee's Decision

The Committee welcomes the information provided by the author that the State party has proposed providing her with compensation and looks forward to receiving detailed information from the State party on this proposal as well as any other means the State party intends to implement its Views.

Case

Carranza Alegre, Marlem, 1126/2002

Views adopted on

28 October 2005

Issues and violations found

Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - articles 2, paragraph 1, 7, 9, 10 and 14.

Remedy recommended

The State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period she has already spent in detention and the nature of the acts of which she stands accused, the State party should give serious consideration to terminating her deprivation of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.

Date of State party's response

25 May 2006 (see 2007 annual report) and 8 August 2007.

State party's response

The State party recalls that the author was released from prison following a judgment of the Supreme Court dated 17 November 2005 in which all charges of terrorism against her

were dropped. The Ministry of Justice, through its National Human Rights Council, requested the Casimiro Ulloa Hospital, in which the author worked as a doctor before her detention, to reinstate her in her post. Such request was accepted and the author was able to rejoin the hospital staff as of 27 April 2007.

<i>Author's response</i>	None
<i>Committee's Decision</i>	The Committee welcomes the information regarding the author's reinstatement in her post at the hospital. It regrets, however, that no compensation has been provided to her and considers the dialogue ongoing.
<i>Case</i>	<i>Quispe Roque, 1125/2002</i>
<i>Views adopted on</i>	21 October 2005
<i>Issues and violations found</i>	Illegal arrest, unfair trial, faceless judges, articles 9 and 14.
<i>Remedy recommended</i>	An effective remedy and appropriate compensation. In the light of the long period that he has already spent in prison and the nature of the acts of which he is accused, the State party should consider the possibility of terminating his deprivation of liberty, pending the outcome of the current proceedings against him. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for State party response</i>	1 February 2006
<i>Date of reply</i>	25 May 2006, 13 August 2007
<i>State party response</i>	On 13 August 2007, the State party sent to the Committee report No. 105-2007-JUS/CNDH-SE-CESAPI of the Executive Secretary of the National Council of Human Rights issued on 24 July 2007, concluding that although the State party is still waiting for the Supreme Court's judgment on the remedy sought by the applicant, it considers that the recommendations of the Committee have been complied with as (a) the applicant was found guilty of the crime against public order-terrorism (affiliation to terrorist organizations) and sentenced to 15 years imprisonment;

and (b) the time spent in jail by the applicant before conviction has been counted as served for the 15 years' imprisonment imposed on him. His imprisonment therefore came to an end on 20 June 2007.

<i>Author's response</i>	None
<i>Committee's Decision</i>	The Committee welcomes the information regarding the author's release from prison. It regrets, however, that no compensation has been provided to him and considers the dialogue ongoing.
<i>Case</i>	<i>Vargas Mas, 1058/2002</i>
<i>Views adopted on</i>	26 October 2005
<i>Issues and violations found</i>	Torture, illegal arrest, inhuman treatment in prison, unfair trial, faceless judges, articles 7, 9, paragraph 1, 10, paragraph 1, 14.
<i>Remedy recommended</i>	The State party is under an obligation to provide the author with an effective remedy and appropriate compensation. In the light of the long period that he has already spent in detention, the State party should give serious consideration to terminating his deprivation of liberty, pending the outcome of the current proceedings against him. Such proceedings must comply with all the guarantees required by the Covenant.
<i>Due date for state party response</i>	6 February 2006
<i>Date of State party response</i>	25 May 2006 and 13 August 2007
<i>State party response</i>	On 13 August 2007, the State party sent to the Committee report No. 105-2007-JUS/CNDH-SE-CESAPI of the Executive Secretary of the National Council of Human Rights issued on 24 July 2007, concluding that although the State party is still waiting for the Supreme Court's judgment on the remedy sought by the applicant, it considers that the recommendations of the Committee have been complied with as (a) the applicant was found guilty for the crime against public order-terrorism (affiliation to terrorist organizations) and sentenced to 20 years of imprisonment; and (b) the time spent in jail by the applicant

before conviction has been counted as served for the 20 years' imprisonment imposed on him.

Author's response

None

Further action required

The Committee considers the dialogue ongoing.

...

1/ Tribunal Constitucional Peruano, En la acción de amparo por Rubén Toribio Muñoz Hermoza, EXP. No. 012 95 AA/TC. The authors also refers to a decision by the same court in 105 2001 AC/TC.

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Peru (15)	202/1986, <i>Ato del Avellanal</i> A/44/40	X A/52/40, A/59/40 A/62/40 and A/63/40				X
	203/1986, <i>Muñoz Hermosa</i> A/44/40	X A/52/40, A/59/40				X
	263/1987, <i>González del Río</i> A/48/40	X A/52/40, A/59/40				X
	309/1988, <i>Orihuela Valenzuela</i> A/48/40	X A/52/40, A/59/40				X
	540/1993, <i>Celis Laureano</i> A/51/40				X A/59/40	X
	577/1994, <i>Polay Campos</i> A/53/40	X A/53/40, A/59/40				X
	678/1996, <i>Gutiérrez Vivanco</i> A/57/40				X A/58/40, A/59/40	X
	688/1996, <i>de Arguedas</i>	X	X			

	A/55/40	A/58/40, A/59/40				
	906/1999, <i>Vargas-Machuca</i> A/57/40				X A/58/40, A/59/40	X
	981/2001, <i>Gómez Casafranca</i> A/58/40				X A/59/40	X
Peru (<i>cont'd</i>)	1125/2002, <i>Quispe</i> A/61/40	X A/61/40				X
	1126/2002, <i>Carranza</i> A/61/40	X A/61/40, A/62/40				X
	1153/2003, <i>K.N.L.H.</i> A/61/40	X A/61/40, A/62/40 and A/63/40				X

	1058/2002, <i>Vargas</i> A/61/40	XA/61/40 and A/62/40				X
	1457/2006, <i>Poma</i> A/64/40				X	
...						

A/64/40 vol. II (2009)

...

Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

<i>State party</i>	<i>Peru</i>
<i>Case</i>	<i>Victor Campos, 577/1994</i>
<i>Views adopted on</i>	6 November 1997
<i>Issues and violations found</i>	Ill-treatment in detention, public display in a cage, detention in isolation, faceless judges - articles 7, 10, paragraph 1, and 14, paragraph 1.
<i>Remedy recommended</i>	The Committee considers that Mr. Polay Campos should be released unless Peruvian law provides for the possibility of a fresh trial that does offer all the guarantees required by article 14 of the Covenant.
<i>Due date for State party response</i>	9 April 1998
<i>Date of State party response</i>	21 March 2008 (the State party had responded on 14 April and 2 June 1998)
<i>State party response</i>	The Committee will recall that in its submission of April and June 1998, the State party had contested the Committee's findings in this case. It stated that a sentence can be reviewed by an extraordinary appeal measure, the recourse of revision foreseen in article 361 of the Code of Criminal Procedure. The Supreme

Court has the power to annul the imposed sentence and order a retrial.

On 25 May 2009, the State party responded to a request from the Secretariat of 20 October 2008 for an update on this case. It submitted that on 21 March 2006, the National Criminal Court sentenced him to two years imprisonment and 5,000,000 PEN (around 1,640,000 US dollars) for crimes inter alia of terrorism, and aggravated terrorism. Following an extraordinary appeal on 12 March 2008, the permanent criminal chamber of the Supreme Court confirmed the judgment but increased the sentence to 35 years of prison. (It is not clear whether the case in question relates to the subject matter of the Views of the Committee)

Author's comments

Awaiting the author's comments.

Committee's Decision

The follow-up dialogue remains ongoing.

Case

Gutierrez Vivanco, 678/1996

Views adopted on

26 March 2002

Issues and violations found

Undue delay, no impartiality or independence, faceless judges – article 14, paragraphs 1 and 3 (c).

Remedy recommended

The State party has the obligation to provide an effective remedy, including compensation, to Mr. José Luis Gutiérrez Vivanco. In addition, the State party has the obligation to ensure that similar violations do not occur in the future

Due date for State party response

25 September 2002

Date of State party response

15 January 2009

State party response

The State party informs the Committee that the author has not filed a lawsuit against the State party claiming damages. By resolution dated 24 December 1998, he was pardoned and, thus, all warrants of arrest against him have been cancelled and all criminal records arising from this process have been deleted.

Author's comments	Awaiting reply.
Committee's Decision	The follow-up dialogue is ongoing.
<i>Case</i>	<i>Gómez Casafranca, 981/2001</i>
Views adopted on	22 July 2003
Issues and violations found	Torture, liberty and security of person, - articles 7; 9, paragraphs 1 and 3; 14 and 15.
<i>Remedy recommended</i>	The State party is under an obligation to release Mr. Gómez Casafranca and pay him appropriate compensation.
<i>Due date for State party response</i>	19 November 2003
<i>Date of State party response</i>	15 January 2009
<i>State party response</i>	The State party informs the Committee that the trial against the author and others for crimes against public order is currently pending at the Penal Chamber of the Supreme Court.
<i>Author's comments</i>	Awaiting comments.
<i>Committee's Decision</i>	The follow-up dialogue is ongoing.
<i>Case</i>	<i>Celis Laureano, 540/1993</i>
<i>Views adopted on</i>	25 March 1996
<i>Issues and violations found</i>	Disappearance, protection of a minor, torture, right to life - articles 6, paragraph 1; 7; and 9, paragraph 1; 2, paragraph 1; 24, paragraph 1.

<i>Remedy recommended</i>	The State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary.
<i>Due date for State party response</i>	30 July 1996
<i>Date of State party response</i>	15 January 2009
<i>State party response</i>	The State party informed the Committee that despite the investigations having been carried out to date the whereabouts of Ana Celis Laureano are unknown. In view of the fact that her participation in the terrorist organization "Shining Path" (<i>Sendero Luminoso</i>) has been proven, she could be in hiding.
Author's comments	Awaiting comments
Committee's Decision	The follow-up dialogue is ongoing.
<i>Case</i>	<i>K.N.L.H, 1153/2003</i>
<i>Views adopted on</i>	25 October 2005
<i>Issues and violations found</i>	Abortion, right to a remedy, inhuman and degrading treatment and arbitrary interference in one's private life, protection of a minor - articles 2, 7, 17, 24.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy, including compensation. The State party has an obligation to take steps to ensure that similar violations do not occur in the future.
<i>Due date for State party response</i>	9 February 2006

*Date of State party
response*

7 March 2006

State party response

The Committee will recall that as set out in the annual report A/61/40, Vol. II, the State party had informed it of the publication of a report by the national human rights Council (*Consejo Nacional de Derechos Humanos*), based on the K.N.L.H. case. The report proposed the amendment of articles 119 and 120 of the Peruvian Criminal Code or the enactment of a special law regulating therapeutic abortion. The National human rights council had required the Ministry of Health to provide information as to whether the author had been compensated and granted an effective remedy. No such information was provided in the letters sent by the Health Ministry in reply to the National Human Rights Council.

The Committee will also recall that during consultations with the State party on 3 May 2006, Mr. José Burneo, Executive Secretary of the National Human Rights Council of Peru, said that the absence of a response was deliberate, as the question of abortion was extremely sensitive in the country. His Office was nevertheless thinking of drafting a bill allowing the interruption of pregnancy in cases of anencephalic foetuses.

Author's comments

By letter of 16 June 2006, the Centre for Reproductive Rights (which represents the author) had contended that by failing to provide the complainant with an effective remedy, including compensation, it had failed to comply with the Committee's decision.

On 6 March 2007, the author informed the Committee that the new Government has continued to question the Committee's Views. On 1 December 2006, the author met with representatives of the Human Rights Council (*Consejo Nacional de Derechos Humanos*) who also spoke for the Ministry of Justice. In that meeting, the State party's representatives explained that the State was willing to comply with the Committee's Views. However, the author considered that the government proposed action, which would consist in the payment of \$10,000 dollars in compensation

as well as the introduction of a proposal to amend legislation in order to decriminalize abortions in cases of anencephalic foetuses, to be insufficient.

Compensation would reportedly be made only in relation to the violation of article 24 of the Covenant, as the State party representatives allegedly indicated that they considered that there had been no violation of other articles of the Covenant. She contended that, in fact, such legislative change is unnecessary as therapeutic abortion already exists in Peru and should be interpreted in accordance with international standards to include cases where the foetus is anencephalic.

The author recalled that the Constitutional Court of Peru (*Tribunal Constitucional Peruano*) has considered that the Committee's Views are definitive international judicial decisions that must be complied with and executed in accordance with article 40° of Law No. 23506 and article 101° of the Constitution.¹ She provides a detailed proposal for reparations totaling \$96,000 dollars (the proposal includes \$850 dollars for payment of expenses such as the birth and baby's burial, \$10,400 dollars for psychological rehabilitation, \$10,000 dollars for diagnostic and treatment of physical consequences, \$50,000 dollars for moral damages and \$25,000 for "life project" (lost opportunities). The State party should retract its proposal in which women seeking a therapeutic abortion must seek a judicial authorisation.

On 7 January 2008, the author submitted that there are currently no technical guidelines or procedures regarding the voluntary termination of pregnancy that could provide guidance to women and doctors, at the national level, on how to terminate a pregnancy because of medical reasons. The Ministry of Health had prepared a proposal, which was submitted to the Cabinet in May 2007, for their review and advice. Those guidelines are currently with the Minister of Health, but according to the author, there is a lack of political will to approve them. The State party has not taken any measures to allow women to have safe therapeutic abortions. It has made changes to the Penal Code, allowing for therapeutic abortion in case of anencephaly, but not for other reasons that also may cause harm to women's mental

health. The author has not accepted the offer of \$10,000 made to her, as: (1) Peru has not accepted responsibility in relation to violations of articles 2, 7 and 17 of the Covenant and (2) The compensation offered is not commensurate to the damage caused. The State party has not yet published the Views.

On 17 March 2009, the author informed the Committee that with respect to the obligation to prevent similar incidents in the future, there is a need for the State party to adopt legislation regulating the legalization of abortion. A “medical protocol”, in accordance with the World Health Organization (WHO) guidelines, is a much needed instrument. As of now, there is no such medical protocol to set guidelines for therapeutic abortion in Peru, and the State party has no intention of issuing such a document. With respect to proposed “technical guidelines” mentioned in the communication, the author states that there hasn’t been much progress. The guidelines were the object of an adverse legal opinion by one of the ministries. Hospitals continue to fail to perform therapeutic abortions and a medical protocol approved by a local government has been suspended. During 2008, there were 12 cases similar to that of Karen Llantoy (anencephalic fetuses) and the women did not benefit from terminations of their pregnancies, hence, the State party is not complying with its obligations as directed by the Committee. The State party has ignored the petition made by Cladem pursuant to the views to issue the guidelines. The State party is studying a project for a new law which would further restrict the possibilities for women to have abortions. The State party offered \$10,000 in 2007, which the author rejected, because the State party does not recognize the violations of the Covenant and because is not commensurate with the damage suffered. The Views have not been disseminated nor published so far.

Committee's Decision

The follow-up dialogue is ongoing.

...

¹ Tribunal Constitucional Peruano, *En la acción de amparo por Rubén Toribio Muñoz Hermoza*, EXP.Nº 012-95-AA/TC. The authors also refer to a decision by the same court in 105-2001-AC/TC.

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

...

Follow-up on views under the Optional Protocol

...

2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

7. With regard to case No. 1407/2005 (***Asensi v. Paraguay***), it would be reasonable for the Committee to request the State party, which claimed that its legislation allowed the author to obtain the right to visit his children, who were living with their mother in Paraguay, to provide the author with detailed information on effective remedies available to him. Turning to case No. 1457/2006 (***Poma v. Peru***), she proposed that the Committee should ask the author whether measures taken by the State party to guarantee access to water resources even in times of shortage, including soliciting and taking into account feedback from the indigenous communities, were sufficient.

...

17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

...

Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

...

<i>State party</i>	<i>Peru</i>
<i>Case</i>	<i>Poma Poma, 1457/2006</i>
<i>Views adopted on</i>	27 March 2009
<i>Issues and violations found</i>	Right to enjoy own culture and lack of remedy - article 27 and article 2, paragraph 3 (a), read in conjunction with article 27.
<i>Remedy recommended</i>	An effective remedy and reparation measures that are commensurate with the harm sustained.
<i>Due date for State party response</i>	6 January 2010
<i>Date of State party response</i>	22 January 2010
<i>State party response</i>	The State Party provides general information on the running of the wells in question. It states that, as a result of the dry season, characterized by intermittent rains, it has become mandatory to exploit the underground waters of the Ayro aquifer in order to satisfy the demand of the population in Tacna. Five wells are being exploited simultaneously to avoid shortages in water supply. Measures have been taken to preserve the Community bogs, and to distribute water evenly among the Peasant Community of Ancomarca. The State party submitted that a Commission has visited the highest part of the basin where the wells are located, verifying the proper hydraulic allocations of each well in

conformity with administrative resolutions issued recently.

On 31 March 2009, a Law on Water Resources was adopted with the aim of regulating the use and exploitation of water resources in a sustainable way. This new legal framework has been explained across the country through several workshops, prioritizing peasants' communities. Further complementary provisions of this law are currently being drafted to take into account feedback from civil society and rural communities.

According to this law, access to water resources is a fundamental right and remains a priority even in times of shortage. The State shall take all measures to ensure this principle, and will do so by taking into account feedback from civil society. The State party shall respect the traditions of indigenous communities and their right to exploit the water resources in their lands. Thus, the State party submits that by these actions further problems like those featured in this case will not arise again.

Author's comments

None

Committee's Decision

The follow-up dialogue is ongoing

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