

AUSTRALIA

Follow-up - Jurisprudence Action by Treaty Bodies

CAT, A/60/44 (2005)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

150. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22.

151. The Rapporteur on follow-up submitted an oral report to the Committee at its thirty-third session. The report contained information received since the thirty-second session from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee had found violations of the Convention. During the consideration of this report, the Committee requested the Special Rapporteur to provide information on follow-up to all decisions in which the Committee had found violations of the Convention, including decisions in which the Committee found violations, prior to the commencement of the Rapporteur's mandate.

152. During the thirty-fourth session, the Special Rapporteur presented a report on follow-up to all the Committee's decisions, including new information received from both the complainants and States parties since the thirty-third session. This report is provided below.

Report on follow-up to individual complaints to the¹ Committee against Torture

Complaints in which the Committee has found violations of the Convention up to thirty-fourth session

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
...							
No.120/1998 <i>Shek Elmi v. Australia</i>	25 May 1999	Somali to Somalia	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.	<p>On 23 August 1999 the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs had decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.</p> <p>On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party.</p>	In light of the complainant's departure no further action requested under follow-up.

						<p>It explained that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Convention relating to the Status of Refugees and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal members. The State party advised the Committee that his new application was comprehensively assessed in light of new evidence which had arisen following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he was who he said he was - the son of a leading elder of the Shikal clan.</p>	
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¹ The present report reflects information up to the end of the thirty-fourth session

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

75. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, *inter alia*, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports to the Committee on his/her activities.

76. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's Decisions.

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79. During the thirty-sixth session, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the thirty-fifth session with respect to the following cases: *Dadar v. Canada* (258/2004), *Thabti v. Tunisia* (187/2001), *Abdelli v. Tunisia* (188/2001) and *Ltaief v. Tunisia* (189/2001) and *Chipana v. Venezuela* (110/1998). Represented below is a comprehensive report of replies received with regard to all cases in which the Committee has found violations of the Convention to date and in one case in which it did not find a violation but made a recommendation. Where there is no field entitled "Committee's decision" at the end of the provision of information in a particular case, the follow-up to the case in question is ongoing and further information has or will be requested of the complainant or the State party.

Complaints in which the Committee has found violations of the Convention up to the thirty-fourth session

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State party	AUSTRALIA
Case	Shek Elmi, 120/1998
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	<p>On 23 August 1999 the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.</p> <p>On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an</p>

officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members.

The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.

Author's response

N/A

Committee's decision

In light of the complainant's voluntary departure no further action was requested under follow-up.

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

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State party	AUSTRALIA
Case	Shek Elmi, 120/1998
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999 the State party responded to the Committee's views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.

On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently “withdrew” his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.

Author's response

N/A

Committee's decision

In light of the complainant's voluntary departure no further action was requested under follow-up.

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow up activities

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions...

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96. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998);...

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99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

**Complaints in which the Committee has found violations of the
Convention up to the fortieth session**

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State party	AUSTRALIA
Case	Shek Elmi, 120/1998
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	<p>On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.</p> <p>On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the</p>

complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.

Author's response

N/A

Committee's decision

In light of the complainant's voluntary departure no further action was requested under follow-up.

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow-up activities

89. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. ...

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92. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998);...

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95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

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State party

AUSTRALIA

Case

Shek Elmi, 120/1998

Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	<p>On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.</p> <p>On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the</p>

Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.

Author's response

N/A

Committee's decision

In light of the complainant's voluntary departure no further action was requested under follow-up.

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CAT, A/65/44 (2010)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

108. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia¹ and Montenegro (with respect to *Dimitrov*, No. 171/2000,² *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);³ *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to *A.J.*, No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No.

101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*⁴ (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

111. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004). In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Rios v. Canada* (No. 133/1999).

112. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

113. During the forty-third and forty-fourth sessions, the Rapporteur for follow-up of decisions on complaints presented new follow-up information that had been received since the last annual report with respect to the following cases: *Guengueng et al. v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Falcon Rios v. Canada* (No. 133/1999); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

114. Represented below is a comprehensive report of replies received with regard to all 49 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

¹ On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on Decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of the Republic of Serbia.

² In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

³ Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

⁴ The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the forty-fourth session

State party	Australia
Case	<i>Shek Elmi, 120/1998</i>
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17

August 1999, and Mr. Elmi was personally notified on 18 August 1999.

On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently “withdrew” his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee’s consideration. The Tribunal was not satisfied as to the complainant’s credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.

**Complainant’s
response**

N/A

**Committee’s
decision**

In light of the complainant’s voluntary departure no further action was requested under follow-up.

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