AUSTRALIA

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:

...

Australia: One decision finding violations; satisfactory follow-up reply, dated 3 May 1996, received from the State Party.

...

Overview of positive examples of follow-up cooperation/replies

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456. On 31 March 1994, the Committee adopted its views on communication No. 488/1992 (Toonen v. Australia), finding a violation of article 17 of the Covenant and recommending that the State party repeal legislation in Tasmania which criminalizes homosexual activity between adult consenting males in private. On 3 May 1996, the State forwarded its follow-up reply to the Committee, noting that the Tasmanian Government did not intend to repeal the law. As a consequence, it had become necessary for the Government of Australia to take action to ensure that the protection of human rights in Australia met the standards set out in the Covenant. The Human Rights (Sexual Conduct) Act 1994 had entered into force on 19 December 1994. That Act provides that sexual conduct involving only consenting adults in private shall not be an offence under any law of the Commonwealth, a State or a Territory. The State party observes that the Act does not provide that the right to be free from interference with privacy is absolute or unlimited. It explicitly recognizes that in some circumstances, it is legitimate to intrude into the privacy of individuals; furthermore, the Act provides that no one shall be subjected to any "arbitrary interference" with privacy. The legislation covers sexual conduct involving only consenting adults in private. The term "sexual conduct" will be given its ordinary meaning by the courts. The State party also notes that Mr. Toonen recently has lodged an application with the High Court to challenge the validity of sections 122 and 123 of the Tasmanian Criminal Code on the basis that those sections are inconsistent with the Human Rights (Sexual Conduct) Act 1994.

CCPR A/52/40, vol. I (1997)

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):

...

Australia: One decision finding violations: 488/1992 - Toonen (1994 Report); 9/ for follow-up reply, see 1996 Report, 10/ para. 456. The laws in question have now been repealed.

9/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40).

10/ Ibid., Fifty-first Session, Supplement No. 40 (A/51/40).

CCPR A/53/40, vol. I (1998)

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.

...

Australia: Two Views finding violations: 488/1992 - Toonen (1994 Report (A/49/40)); for follow-up reply, see 1996 Report (A/51/40), para. 456; the laws in question have now been repealed; 560/1993 - A (1997 Report (A/52/40)); follow-up reply, dated 16 December 1997 (see para. 491 below).

...

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

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491. Australia. By submission of 16 December 1997, Australia submitted follow-up information in respect of case No. 560/1993 (A. v. Australia), adopted on 3 April 1997. The State party indicates that it shares the Committee's concerns that prolonged or indefinite detention is undesirable, but it does not accept the Committee's Views that A's detention was arbitrary or that the Government had not provided sufficient justification. As a consequence, it rejects the Committee's recommendation to pay compensation. Moreover, the State party takes issue with the Committee's interpretation of article 9(4) and contests that the term "lawfulness" means "lawful at international law" or "not arbitrary"; according to the State party, "lawfulness" only refers to domestic law.

...

507. The Committee decided that in view of the replies received, further follow-up consultations are required in respect of Australia, Panama, Spain, Suriname and Trinidad and Tobago.

CCPR A/54/40, vol. I (1999)

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.

...

Australia: Two Views finding violations: 488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, para. 456; the laws in question have now been repealed; 560/1993 - A. (A/52/40); for State party's follow-up reply, dated 16 December 1997, see A/53/40, para. 491.

CCPR A/55/40, vol. I (2000)

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.

...

Australia: Two Views finding violations: 488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, para. 456; 560/1993 - A. (A/52/40); for State party's follow-up reply, dated 16 December 1997, see A/53/40, para. 491. See also below.

...

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

...

Australia. During the Committee's sixty-eighth session, the Special Rapporteur for the follow-up on Views met with a representative of Australia to discuss the State party's negative reply in case No. 560/1993 - A. A further meeting with a delegation of the State party took place on 21 July 2000, on the occasion of the Committee's consideration of Australia's third and fourth periodic report. A reference to these meetings will be included in the follow-up progress report, to be presented to the Committee in March 2001.

CCPR A/56/40, vol. I (2001)

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.

...

Australia: Two Views finding violations: 488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, paragraph 456; 560/1993 - A. (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and below.

...

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

...

183. Australia: At a meeting between the Special Rapporteur and a delegation from the State party, on 21 July 2000, on the occasion of the Committee's consideration of Australia's third and fourth periodic reports, the State party's representatives stated that there had been changes in the administrative procedure and that detentions were now administratively reviewed. The Special Rapporteur requested a written update, which has not been received.

CCPR A/57/40, vol. I (2002)

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.

...

Australia: Views in four cases with findings of violations:

488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - A. (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

930/2000 - Winata et al. (A/56/40); for follow-up replies, see paragraph [232] below;

802/1998 - Rogerson (annex IX); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy.

...

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.

...

232. Australia: With regard to case No. 930/2000 - Winata et al. (A/56/40), the State party provided an interim response by note verbale of 3 December 2001. It stated that Mr. Winata and Ms. Li had met core requirements for the grant of a parent visa offshore on 13 August 2001 allowing their application to be placed in the parent queue. The State party noted that parent visas are in high demand and a limited number are granted each year. Visa places are allocated in order based on a person's queue date. On this basis, it would be some time before a parent place is available for Mr. Winata and Ms. Li. The State party reiterated that a criterion of a parent visa is that the applicant must be outside Australia when the visa is granted. Accordingly, Mr. Winata and Ms. Li must be outside Australia in order for a parent visa to be granted. If parent visas are granted, they would be entitled to return to Australia. The State party stated that it was currently considering whether and on what basis under Australian law Mr. Winata and Ms. Li may remain in Australia pending the grant of a parent visa, and that it would provide a full response as soon as possible. This reply has not yet been received. By note of 15 July 2002, the State party stated that, while it has not yet been possible to resolve the situation, Mr. Winata and Ms. Li remain in the community, and a number of options are being explored, including how the Committee's Views can be given effect.

...

CCPR A/58/40, vol. I (2003)

CHAPTER VI. Follow-up activities under the Optional Protocol

...

223. The previous annual report of the Committee[1] 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.*

...

Australia: Views in five cases with findings of violations:

488/1992 - *Toonen* (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - *A.* (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

900/1999 - *C.* (annex VI); for follow-up reply, see paragraph 225 below;

930/2000 - *Winata et al.* (A/56/40); for follow-up replies, see A/56/40, paragraph 232;

983/2001, *Love et al.* (annex VI); follow-up reply not yet due.

...

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.

225. **Australia**: with regard to case No. 900/1999 - *C.* (annex VI), the State party provided an interim response by note verbale of 10 February 2003. It stated that every effort was being made to resolve the situation as quickly as possible, but, given the complex nature of the issues

involved, high-level consultation among government authorities was required. To date, no further information has been received. On 11 March 2003, counsel informed the Committee that the State party had taken no measures to give effect to its Views and that the author continued to be detained.

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.

...

AUSTRALIA:

Rogerson v. Australia, Case no. 802/1998, Views adopted on 3 April 2002

Violations found: Article 14, paragraph 3(c)

Issues of case: Unfair contempt proceedings; discrimination on basis of professional status; multiple punishment for same offence

Remedy recommended: The finding of a violation of the rights of the author under article 14, paragraph 3 (c), of the Covenant constitutes a sufficient remedy.

Deadline for State party follow-up information: 10 September 2002

Follow-up information received from State party: The Committee received a submission from the State Party, dated 2 September 2002. The Australian Government considered that there are no measures which Australia is required to take to give effect to the Committee's views, since at paragraph 11 of final Views the Committee stated that it: "*...considers that its finding of a violation of the rights of the author under article 14, paragraph 3(c), of the Covenant, constitutes sufficient remedy*." The Australian Government affirmed its purpose to present the Committee's Views in Parliament, in accordance with the Committee's request, and in accordance with its established practice. The Government also observes that it has forwarded the Committee's Views to the Government of the Northern Territory.

Follow-up information received from author: None

Special Rapporteur's recommendations: No further consideration under the follow-up procedure

required, as the State party has complied with the Committee's recommendations.

C. v. Australia, Case no. 900/1999, Views adopted on 28 October 2002

Violations found: Articles 7 and 9, paragraphs 1 and 4

Issues of case: Immigration detention of asylum seeker with mental problems

Remedy recommended: As to the violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting him to Iran. The State party is under an obligation to avoid similar violations in the future.

Deadline for State party follow-up information: 4 February 2003

Follow-up information received from State party. The State party informed the Committee, by note verbale of 10 February 2003, that the matter is being treated as a priority and that every effort is being made to resolve the situation as quickly as possible, but that, given that the issues raised are complex, high-level consultation among Government authorities is required.

Follow-up information received from author: None

Special Rapporteur's recommendations: Reminder to be addressed to the State party.

Winata v. Australia, Case no. 930/2000, Views adopted on 26 July 2001

Violations found: Articles 17, 23, paragraph 1, and 24, paragraph 1.

Issues of case: Removal from Australia of Indonesian parents of Australian-born child.

Remedy recommended: To refrain from removing the authors from Australia before they have had an opportunity to have their application for parent visas examined with due consideration given to the protection required by their child's status as a minor.

Deadline for State party follow-up information:12 November 2001

Follow-up information received from State party: By note verbale of 3 December 2001, the State party provided an interim response. It stated that Mr. Winata and Ms. Li had met core requirements for the grant of a parent visa offshore on 13 August 2001, allowing their application to be placed in the parent queue. The State party noted that parent visas are in high demand and only a limited number are granted each year. Visa places are allocated in order based on a person's queue date. On this basis, it would be some time before a parent place is available for Mr. Winata and Ms. Li. The State party reiterated that a criterion of a parent visa is that the applicant must be outside Australia when the visa is granted. Accordingly, Mr.

Winata and Ms. Li must be outside Australia in order for a parent visa to be granted. If parent visas are granted, they would be entitled to return to Australia. The State party stated that it was currently considering whether and on what basis under Australian law Mr. Winata and Ms. Li may remain in Australia pending the grant of a parent visa, and that it would provide a full response as soon as possible. This reply has not yet been received. By note of 15 July 2002, the State party stated that, while it has not yet been possible to resolve the situation, Mr. Winata and Ms. Li remain in the community, and a number of options are being explored, including how the Committee's Views can be given effect.

Follow-up information received from author: None

Special Rapporteur's recommendations: A further update should be requested of the State party.

Cabal and Pasini v. Australia, Case no. 1020/2001, Views adopted on 7 August 2003

Violations found: Article 10, paragraph 1

Issues of case: Application of Covenant to privately run detention facilities, failure to segregate convicted and accused prisoners, effect of Australian reservation to art.10, degrading conditions.

Remedy recommended: Compensation

Deadline for State party follow-up information: 1 December 2003

Follow-up information received from State party: On 17 February 2004, the State party stated that it had forwarded the Views to the State of Victoria and that the Victorian government had informed it that the authors had refused the option of being placed in separate cells and had requested to remain together. It advised that it is very unusual for two people to be placed in such a cell and the Victorian police have been asked to take any necessary steps to ensure that a similar situation does not arise again. The State party does not accept that the authors are entitled to compensation.

Follow-up information received from author: None

Special Rapporteur's recommendations: No further consideration under the follow-up procedure.

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CCPR A/59/40 vol. I (2004)

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee[1] 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.[*]

...

Australia: Views in 10 cases with findings of violations:

488/1992 - *Toonen* (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - *A.* (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

802/1998 - *Rogerson* (A/58/40); no follow-up reply required because the Committee considered the finding of a violation to be a sufficient remedy; this was affirmed by the State party in its follow-up reply, see paragraph 229 above; for the same reason, in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during the eightieth session, the Special Rapporteur recommended that this case should not be considered under the follow-up procedure;

900/1999 - *C.* (A/58/40); for follow-up reply see A/58/40, paragraph 225. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the State party be reminded to furnish its follow-up reply;

930/2000 - *Winata et al.* (A/56/40); for follow-up replies, see A/56/40, paragraph 232. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the State party be reminded to furnish its reply;

941/2000 - *Young* (A/58/40); for follow-up reply see paragraph 230 above;

1014/2001 - *Baban et al.* (A/58/40); follow-up reply not yet received;

1020/2001 - *Cabal and Pasini* (A/58/40); for follow-up reply see paragraph 231 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered any further under the follow-up procedure;

1069/2002 - *Bakhitiyari* (annex IX); follow-up reply not yet due;

1011/2002 - *Madaferri* (annex IX); follow-up reply not yet due.

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OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD, SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER DEVELOPMENTS

231. 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.

232. Australia: with regard to case No. 802/1998 - *Rogerson* (A/58/70): on 2 September 2002, the State party provided a response in which it considered that there are no measures required to be taken to give effect to the Committee's Views and affirmed its purpose to present the Committee's Views in Parliament and to forward them to the Government of the Northern Territory.

233. Case No. 941/2000 - *Young* (A/58/40): on 19 March 2004, the author's counsel stated that the State party had not implemented the Committee's Views. On 11 June 2004, the State party reiterated the arguments put forward in its response to the author's claims, maintaining that the sexual orientation of the author was not determinative of his entitlement to the pension under the Veteran's Entitlements Act 1986. It submitted that it does not accept the Committee's finding that Australia has violated article 26 and therefore rejects the conclusion that the author is entitled to an effective remedy.

234. Case No. 1020/2001 - *Cabal and Pasini* (A/58/40): on 17 February 2004, the State party stated that it had forwarded the Views to the State of Victoria and that the Victorian government had informed it that the authors had refused the option of being placed in separate cells and had requested to remain together. It advised that it is very unusual for two people to be placed in such a cell and the Victorian police have been asked to take any necessary steps to ensure that a similar situation does not arise again. The State party does not accept that the

authors are entitled to compensation.

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.

CCPR, CCPR/C/SR.2280 (2005)

Human Rights Committee
Eighty-third session

Summary record of the 2280th meeting
Held at Headquarters, New York, on
Friday, 1 April 2005, at 10 a.m.

...

Follow-up on views under the Optional Protocol

...

2. **Mr. Ando**, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, presented the Follow-up Progress Report (CCPR/C/83/FU1 and FU2), which updated the Committee's previous annual report (CCPR/C/81/CRP.1/Add.6) on follow-up activities and included information received between the eighty-first and eighty-third sessions. It dealt with 20 different States parties and covered 18 cases... In case No. 900/1999 (*C... v. Australia*), the State party had given a detailed response but the Committee had only asked for an update of the information. With respect to case No. 941/2000 (*Young v. Australia*), the Committee, not having found violation, had only asked for an effective remedy and had requested that the State party reconsider its decision. With respect to case No. 930/2000 (*Winata v. Australia*), the Committee had asked for, and the State party had agreed, to a stay of the deportation order pending reconsideration of the case in the light of existing immigration laws. He recommended that the situation should be monitored.

CCPR, A/60/40 vol. I (2005)

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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
...						
Australia (10)	488/1992, *Toonen* A/49/40	X A/51/40	X			
	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	802/1998, *Rogerson* A/58/40	Finding of a violation was considered sufficient	X			X
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU1 A/60/40 (annex VII)				
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU1, A/57/40, A/60/40 (annex VII)				X
	941/2000, *Young* A/58/40	X A/58/40, A/60/40 (annex VII)		X		X
	1014/2001, *Baban et al.* A/58/40	X A/60/40 (annex VII)		X		X
	1020/2001, *Cabal and Pasini* A/58/40	X A/58/40, CCPR/C/80/FU1		X		X
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40 (annex VII)		X		X
	1011/2002, *Madaferri*, A/59/40				X	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, A/60/40 vol. II (2005)

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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/59/40).

State party	*AUSTRALIA*
Case	C., 900/1999
Views adopted on	28 October 2002
Issues and violations found	Immigration detention of refugee applicant with psychiatric problems - articles 7 and 9, paragraphs 1 and 4.
Remedy recommended	As to the violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting the author to Iran.
Due date for State party response	4 February 2003
Date of reply	28 September 2004 (similar reply received on 10 February 2003)
State party response	The State party advises the Committee that the author has been released from the Maribyrnong Immigration Detention Centre into home detention. He is now living in a private home in Melbourne. He is free to move about within the Australian community provided he is in the presence of one of his nominated relatives. This arrangement has been in place for over 14 months. The State party is considering how the author's situation is to be resolved but has not yet finalized this process. It ensures the Committee that a detailed response will be provided as soon as possible.
Author's response	On 19 October 2004, the author responded to the State party's submission, confirming that the author is in "home detention" but that his

	movements are restricted as described by the State party. He states that as the deportation order has not been revoked, he is still at risk of deportation, and that no compensation has been paid for his unlawful detention.
State party	**AUSTRALIA**
Case	Madafferi, 1011/2001
Views adopted on	28 July 2004
Issues and violations found	Deportation of Italian man to Italy, married to Australian with Australian-born children - article 10, paragraph 1.
Remedy recommended	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 and appropriate remedy, including refraining from removing Mr. Madafferi from Australia before he has had the opportunity to have his spouse visa examined with due consideration given to the protection required by the children's status as minors.
Due date for State party response	26 October 2004
State party response	None
Author's response	On 17 March 2005, counsel submitted that the State party had still not resolved the author's situation. The author continues to be unwell, but while the State party has made arrangements for him to be released from the detention centre and to return home with liberal arrangements to stay within the community with a member of his family, his legal status has not changed. The Minister for Immigration is reluctant to make a decision.
State party	**AUSTRALIA**
Case	Young, 941/2000
Views adopted on	6 August 2003
Issues and violations found	Discrimination on grounds of sexual orientation in provision of social security benefits - article 26.
Remedy	An effective remedy, including the reconsideration of his pension

recommended	application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law.
Due date for State party response	12 November 2003
Date of reply	The State party had replied on 11 June 2004
State party response	In the State party's response, it submitted, inter alia, that it does not accept the Committee's finding that it violated article 26 and therefore rejects the conclusion that the author is entitled to an effective remedy. (see Annual Report CCPR/C/81/CRP.1/Add.6).
Author's response	On 16 August 2004, the author responded to the State party's submission, expressing his disappointment that the State party merely reiterates its arguments provided prior to consideration of the case. He is particularly offended by the State party's questioning of his long-standing and committed relationship of 38 years with his partner Mr. Cains. He requests the Committee to ask the State party to fulfil its obligations under the Covenant.
State party	**AUSTRALIA**
Case	Winata, 930/2000
Views adopted on	26 July 2001
Issues and violations found	Removal from Australia of Indonesian parents of Australia-born child - articles 17, 23, paragraph 1, and 24, paragraph 1.
Remedy recommended	To refrain from removing the authors from Australia before they have had an opportunity to have their applications for parent visas examined with due consideration given to the protection required by their child's status as a minor.
Due date for State party response	12 November 2001
Date of reply	2 September 2004
State party response	The State party advises that the authors remain in Australia and that it is considering how their situation can be resolved within existing Australian immigration laws. It ensures the Committee that a detailed response will be provided as soon as possible.

State party	**AUSTRALIA**
Case	Baban, 1014/2001
Views adopted on	6 August 2003
Issues and violations found	Deportation; risk of torture - articles 9, paragraphs 1 and 4.
Remedy recommended	Effective remedy, including compensation.
Due date for State party response	27 November 2003
Date of reply	18 February 2005
State party response	As to the finding that the State party breached its obligations regarding arbitrary detention under article 9, paragraph 1, the State party reiterates its submission to the Committee on the merits, that immigration detention is not arbitrary and is an exceptional measure reserved to persons who arrive or remain in Australia without authorization. The author and his son were free to leave Australia at any time while in detention. The High Court of Australia has upheld the constitutionality of Australia's immigration detention provisions under the Migration Act 1958, finding that they are not punitive but reasonably capable of being seen as necessary for the purposes of deportation or of enabling an entry application to be made and considered. Consistent with Australia's obligations under the Convention on the Rights of the Child, it was assessed to be in the best interests of the son for him to remain with his father, the author. In the individual circumstances of this case the detention was considered necessary, justifiable and appropriate. It was also proportionate to the ends sought, namely, to allow consideration of the author's claims and appeals, and to ensure the integrity of Australia's right to control entry. As to the finding of a violation of article 9, paragraph 4, the State party does not agree with the interpretation of this article. In its view the term "lawfulness" refers to the Australian domestic legal system, and there is nothing in the Covenant, *travaux preparatoires*, or Committee's general comments to suggest that it means "lawful at international law" or "not arbitrary". Thus, the State party does not accept the Committee's view that Australia breached article 9, paragraph 4 of the Covenant, neither is it of the view that the authors are entitled to an

effective remedy.

State party	**AUSTRALIA**
Case	Bakhtiyari, 1069/2002
Views adopted on	29 October 2003
Issues and violations found	Possible deportation of the wife and children of the author while the latter is recognized as a refugee in Australia - articles 9, paragraphs 1 and 4, and 24, paragraph 1, and, potentially, of articles 17, paragraph 1, and 23, paragraph 1.
Remedy recommended	As to the violation of article 9, paragraphs 1 and 4, continuing up to the present time with respect to Mrs. Bakhtiyari, the State party should release her and pay her appropriate compensation. So far as concerns the violations of articles 9 and 24 suffered in the past by the children, which came to an end with their release on 25 August 2003, the State party is under an obligation to pay appropriate compensation to the children. The State party should also refrain from deporting Mrs. Bakhtiyari and her children while Mr. Bakhtiyari is pursuing domestic proceedings, as any such action on the part of the State party would result in violations of articles 17, paragraph 1, and 23, paragraph 1, of the Covenant.
Due date for State party response	1 February 2004
Date of reply	The State party had responded on 24 December 2004.
State party response	On 29 December 2004, the State party welcomes the finding that Mr. Bakhtiyari was not detained arbitrarily. As to the finding that the children and Mrs. Bakhtiyari were arbitrarily detained, the State party reiterates its submission to the Committee on the merits, that immigration detention is not arbitrary and is an exceptional measure reserved to persons who arrive or remain in Australia without authorization. It states that the process of assessing Mrs. Bakhtiyari's application for a protection visa and merits review of the decision on that application was completed within six months of the making of her application. Detention following that time reflects her own efforts to have a more favourable decision substituted by the Minister in her favour, and the hearing of domestic legal proceedings relating to her application. She was free to leave Australia with her children and husband at any time while in detention. The High Court of Australia

has upheld the constitutionality of Australia's immigration detention provisions under the Migration Act 1958, finding that they are not punitive but reasonably capable of being seen as necessary for the purposes of deportation or of enabling an entry application to be made and considered. In these circumstances, the State party maintains that the detention of Mrs. Bakhtiyari is reasonable and proportionate, and remains justified. With regard to the view that the State party violated article 9, paragraph 4, with respect to Mrs. Bakhtiyari' and her children, the State party does not accept the Committee's interpretation. In its view the term "unlawful" in this provision refers to the Australian domestic legal system. There is nothing in the terms of the Covenant that suggests that "lawful" was intended to mean "lawful at international law" or "not arbitrary". It maintains that the option of seeking a writ of habeas corpus is and was available to Mrs. Bakhtiyari, and also to her children prior to their release. As to the possibility of a breach of articles 17 and 23 if Mrs. Bakhtiyari and her children are removed prior to Mr. Bakhtiyari, the State party submits that it is its objective to remove the family together. This can be demonstrated by the way in which the Government has managed the various family members to date. As to the Committee's view that the State party has breached the children's rights under article 24, it maintains its view that it has afforded the children adequate protection. Having regard to its position, the State party is not of the view that the authors are entitled to an effective remedy of compensation or that Mrs. Bakhtiyari is entitled to release.

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.

...

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)

...

1. Mr. ANDO, Special Rapporteur for follow-up on Views, introduced the "Progress follow-up report of the Human Rights Committee on individual communications" (CCPR/C/87/R.3). In the Madafferi v. Australia case (communication No. 1011/2001), the State party had granted the author a spouse (migrant) permanent visa on 3 November 2005; the matter at issue had thus been resolved.

2. The same State party had provided a detailed response in respect of Faure v. Australia (communication No. 1036/2001), arguing that the Committee's conclusion departed from its earlier jurisprudence where it had found violations of article 2 of the Covenant in combination with breaches of a substantive right that required a remedy only. The State party had refused to accept the Committee's View.

3. Mr. SHEARER, supported by Mr. KÄLIN, said that, given the comprehensive nature of the State party's response, the Committee's decision to consider it "unsatisfactory" seemed unwarranted. That term was generally applied when a State party failed to respond in full or at all, misinterpreted the Committee's decision, or adduced new arguments. While the Committee might disagree with its content, the response was well reasoned and must be acknowledged as such. He therefore proposed amending the entry to read: "Noting the State party's refusal to accept its Views, the Committee considers the dialogue ongoing."

4. Sir Nigel RODLEY said that, contrary to the State party's assertions, in the case in question the Committee had found a violation of article 2 together with article 8. At no point had the Committee departed from its position that the rights articulated in article 2 were accessory in nature. The Committee's conclusions were consistent with the Views adopted in Kazantzis v. Cyprus (communication No. 972/2001). While he, too, welcomed the State party's comprehensive response, the allegation that the Committee had departed from its earlier jurisprudence should not remain uncontested.

5. Ms. WEDGWOOD wondered whether it was necessary to refer to an “ongoing” dialogue, given that the State party had provided a conclusive response.

6. Mr. O’FLAHERTY said that, although he agreed in substance with Sir Nigel Rodley, it seemed ill-advised to use the section detailing the Committee’s decision to justify Views adopted previously; the reasons for reaching those conclusions were provided in the relevant jurisprudence. It might be useful, however, to include a reference to the Committee’s dissatisfaction with the State party’s response. The reference to an ongoing dialogue must be retained until the State party had taken remedial action.

7. Mr. WIERUSZEWSKI suggested amending the sentence to read: “While regretting the State party’s views, the Committee considers the dialogue ongoing.”

...

14. Mr. SOLARI YRIGOYEN, supported by Mr. SHEARER, said that he, too, was impressed by the State party’s response. However, it might be judicious to wait for the author’s comments before considering the case closed.

...

CCPR, A/61/40 vol. I (2006)

...

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
...						
Australia (14)	488/1992, *Toonen* A/49/40	X A/51/40	X			
	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	802/1998, *Rogerson* A/58/40	Finding of a violation was considered sufficient	X			
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU1 A/60/40 (annex V to this report)			X	X
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU1 and A/57/40 and A/60/40 (annex V to this report)			X	X
	941/2000, *Young*	X A/58/40, A/60/40 (annex		X		

	A/58/40	V to this report)				
	1011/2002, *Madaferri* A/59/40	X A/61/40	X			
	1014/2001, *Baban et al.* A/58/40	X A/60/40 (annex V to this report)		X		X
	1020/2001, *Cabal and Pasini* A/58/40	X A/58/40, CCPR/C/80/FU1		X[a]		X
	1036/2001, *Faure* A/61/40	X A/61/40				X
	1050/2002, *Rafie and Safdel* A/61/40	Not due				
	1157/2003, *Coleman* A/61/40	Not due				
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40 (annex V to this report)		X		X
	1184/2003, *Brough* A/61/40				X	X
...						

[a] In CCPR/C/80/FU1 the State party's response is set out. It submitted that it is unusual for two persons to share cells and that it has asked the Victorian police to take the necessary steps to ensure that a similar situation does not arise again. It does not accept that the authors are entitled to compensation. The Committee considered that this case should not be considered any further under

the follow-up procedure.

CCPR, A/61/40 vol. II (2006)

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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).

...

State party	**AUSTRALIA**
Case	Winata, 930/2000
Views adopted on	26 July 2001
Issues and violations found	Removal from Australia of Indonesian parents of Australia-born child. Articles 17; 23, paragraph 1; 24, paragraph 1.
Remedy recommended	To refrain from removing the authors from Australia before they have had an opportunity to have their applications for parent visas examined, with due consideration given to the protection required by their child's status as a minor.
Due date for State party response	12 November 2001
Date of State party's response	2 September 2004
State party response	The State party advised that the authors remained in Australia and that it was considering how their situation could be resolved within existing Australian immigration laws. A detailed response would be provided to the Committee as soon as possible.
Author's response	On 5 September 2005 counsel informed the Committee that no action had been taken by the State Party to implement the Committee's recommendation. Mr. Winata and Ms. Li have not been deported but rather remain in limbo. They are still stateless and have been told that their application is still "in the queue".
Case	Madafferi, 1011/2001

Views adopted on	28 July 2004
Issues and violations found	Removal from Australia of Italian father of Australia-born children -Articles 10, paragraph, 1, 17, paragraph 1, in conjunction with articles 23 and 24, paragraph 1 of the Covenant
Remedy recommended	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 and appropriate remedy, including refraining from removing Mr. Madafferi from Australia before he has had the opportunity to have his spouse visa examined with due consideration given to the protection required by the children's status as minors. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	26 October 2004
Date of State party's response	June 2006
State party response	As to the violation of article 10, paragraph 1, for the relocation of Mr. Madafferi to an immigration detention centre at risk to his mental health in June 2003, the State party advises that immigration detainees are treated with humanity and with respect for their inherent dignity as human persons. The Department of Immigration and Multicultural Affairs ("DIMA") works closely with experienced health professionals to ensure that the health care needs of detainees are appropriately met. Detainees have access to a wide range of health care services, including psychological/psychiatric services. The health care needs of each detainee are identified by qualified medical personnel as soon as possible after a person is placed in detention. The care and welfare of detainees with special needs is a matter of particularly close oversight and management by both departmental and detention service provider staff within immigration detention facilities. Where necessary, detainees are referred to external advice and/or treatment. In the present case, the author was transferred to an immigration detention centre for the following reasons: his flight risk had increased because he had exhausted his domestic avenues for judicial remedy and was facing the imminent prospect of removal from Australia; he had a previous history of avoiding DIMA whilst living in Australia unlawfully for 6 years; and to facilitate the administrative aspects of his removal from Australia.

The state of Mr. Madafferi's mental health (including as described in medical reports) was carefully weighed against these factors. However, the Australian Government considered that it was the prospect of removal from Australia, rather than the return to an immigration detention centre for a short period, which was having the greatest impact on Mr. Madafferi's mental health at this point in time. Taking all these factors into account, the Australian Government considers that the decision to detain Mr. Madafferi was based on a proper assessment of his circumstances and was proportionate to the ends sought. Mr. Madafferi's detention was in accordance with Australian domestic law and flowed directly from his status as an unlawful non-citizen.

The Australian Government wishes to advise the Committee that Mr. Madafferi was granted a spouse (migrant) permanent visa on 3 November 2005. This allows Mr. Madafferi to remain in Australia on a permanent basis, subject to the conditions of the visa. The decision to grant Mr. Madafferi a visa has been made in accordance with Australian domestic immigration law.

As to the Committee's view that the removal of Mr. Madafferi from Australia would constitute arbitrary interference with the family, contrary to article 17 (1), in conjunction with article 23, and article 24 (1) (in relation to the four minor children), the State party reiterates its submissions to the Committee on the admissibility and merits of Mr. Madafferi's communication with regard to these articles. It submits, inter alia, that article 17 does not confer on a non-citizen the right to live and raise children in a country in which he resides unlawfully. Nor is there a legitimate expectation on the part of a person residing unlawfully in a country of continuing to live in that country. Any removal of Mr. Madafferi would not have interfered with the privacy of the Madafferi family as individuals or their relationships with each other. Nor would Australia's actions with regard to Mr. Madafferi have been unlawful or arbitrary. Any decision to remove Mr. Madafferi from Australia would have been made in accordance with Australian law and would have been solely aimed at ensuring the integrity of Australia's migration system.

The State party's obligation to protect the family under article 23 of the Covenant does not mean that Australia is unable to remove an unlawful non-citizen just because that person has established a family with Australian nationals. Had Mr. Madafferi been removed from Australia, it would have resulted from his conduct in twice over-staying his Australian entry permit, his dishonesty when dealing with Australian immigration officials and his substantial criminal record.

	Finally, the State party does not accept that Mr. Madafferi's removal would have amounted to a violation of article 24 as it would not have amounted to a failure to provide protection measures that are required by the Madafferi children's status as minors. Any long term separation of Mr. Madafferi from the Madafferi children would have occurred as a result of decisions made by the Madafferi family and not as a result of Australia's actions. The State party does not accept the Committee's view that Australia is under an obligation to provide Mr. Madafferi with an effective and appropriate remedy.
Author's response	By email on 16 June 2006, the author confirmed that he had been granted a permanent residence visa.
Committee's Decision	While regretting the State party's refusal to accept its Views, the Committee regards the provision of a permanent residence visa to the author as a satisfactory remedy to the violations found.
Case	Faure, 1036/2001
Views adopted on	31 October 2005
Issues and violations found	Compatibility of "Work for Dole Programme" with the Covenant – articles 2, paragraphs 3 in conjunction with 8.
Remedy recommended	While 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, the Committee is of the view that in the present case its Views on the merits of the claim constitutes sufficient remedy for the violation found. The State party is under an obligation to ensure that similar violations of the Covenant do not occur in the future.
Due date for State party response	20 February 2006
Date of State party's response	7 February 2006
State party response	Australia welcomes the HRC finding that there was no violation of article 8 (3) of the ICCPR. However, regarding the HRC's view that there was a breach of article 2, the Australian Government does not share the HRC's interpretation of article 2, and it notices that it is the first occasion on which the HRC has found that there can be a breach of article 2 in the absence of a breach of an article that contains a

substantive guarantee.

Australia refers to the HRC's jurisprudence (*Karen Noelia Llantoy Huamán v. Peru*, 1153/2003) and says that article 2 is an accessory right which lays down general obligations for States and that it cannot be invoked in isolation from other Covenant rights. Australia also recalls general comment No. 29, paragraph 14, and says it interprets the statement in line with its ordinary meaning, so that there must be a breach of a right before article 2 may be invoked to require a State to provide an effective remedy. Australia further adds that academic commentators have agreed with Australia's interpretation of article 2 (3) and quotes Joseph, Schultz and Castan.

Australia states that its interpretation of article 2 is also in accordance with the HRC's decisions in *GB v. France* (348/1989) and *SG v. France* (347/1988). It quotes paragraph 3 of the individual opinion of three HRC members in *Kall v. Poland* (552/1993) in which it is affirmed that the HRC "has taken the view so far that [article 2 (3)] cannot be found to have been violated by a State unless a corresponding violation of another right under the Covenant has been determined". Australia further recalls that in paragraph 7.9 of

Andrew Rogerson v. Australia (802/1998) the HRC found that "the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol".

Moreover, Australia stresses that in *Karen Noelia Llantoy Huamán v. Peru* (1153/2003), whose views were adopted the day before the present views, the HRC found a violation of article 2 only in conjunction with a violation of other substantive articles. Australia finally recalls that in *Dimitrov v. Bulgaria* (1030/2001), considered in the same sitting, the HRC found that, as the claim under article 14 was inadmissible *ratione materiae*, the claim under article 2 was unable to be sustained and was also inadmissible. Australia deems that the conclusion of the HRC in this case - that there has been a breach of article 2 in the absence of a breach of a substantive right which requires a remedy - departs from the HRC's previous jurisprudence.

Applying the jurisprudence of *CF et al v. Canada* (113/1981) to the present case, Australia states it should not be obliged to provide a way of challenging the entire legislative structure for the Work of the Dole scheme as a preventive measure, but if there is a violation, there should be an effective remedy after that violation. Australia affirms that the complainant did have access to many domestic remedies which could provide her with redress. Australia further claims that the

complainant could have sought judicial review of the decision of the Human Rights and Equal Opportunity Commission in the Federal Court or Federal Magistrates Court.Australia then comments on the HRC's Concluding Observations on Australia's third and fourth Reports where the HRC was concerned about the absence of a constitutional 'bill of rights' in Australia. Australia notes that there is no requirement for States parties to adopt the Covenant and other international human rights obligations in their entirety into their domestic law. The Australian Government says it does not support a bill of rights for Australia because the country already has a robust constitutional structure, an extensive framework of legislation protecting human rights and prohibiting discrimination, and an independent human rights institution, the Commission. The latter mechanism holds the legislative branch and Australian Government accountable against human rights standards and thereby substantively achieves the same outcome in this respect as would legislation that directly implements the Covenant. Australia adds that human rights are also protected and promoted by Australia's strong democratic institutions.

For these reasons, the Australian Government cannot accept the HRC's view that Australia has breached article 2.

Author's response

In March 2006, the author commented that although the State party purported to accept the Views of the Committee in one paragraph of its response it specifically refused to accept its Views in a subsequent.

Committee's Decision

The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.

CCPR, CCPR/C/SR.2450 (2007)

Human Rights Committee
Eighty-ninth session
Summary record of the 2450th meeting
Held at Headquarters, New York, on Thursday, 29 March 2007, at 10 a.m.

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/89/R.5)

1. **Mr. Shearer** (Special Rapporteur for follow-up on Views) introduced his report, which compiled information received during the eighty-eighth and eighty-ninth sessions of the Committee. In the case of *Coleman v. Australia* (communication No. 1157/2003) and *Brough v. Australia* (communication No. 1184/2003), the State party contested the Committee's Views in its respective responses. For both cases the Committee's comments regarding further action would indicate that the State party's response had been submitted to the author for comments on 23 February 2007 with a deadline of two months for a reply and that the Committee regretted the State party's refusal to accept the Committee's Views and considered the dialogue ongoing.

...

29. **Mr. Shearer** said that he had some additional information relating to the case of *Young v. Australia* (communication No. 941/2000): a private members' bill proposing the abolition of discriminatory pension legislation had recently been introduced in the Australian Parliament and the Government had pledged to support it.

...

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...

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

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**
Australia (24)	488/1992, *Toonen* A/49/40	X A/51/40	X			
	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	802/1998, *Rogerson* A/58/40	Finding of a violation was considered sufficient	X			
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU1 A/60/40 (annex V to this report) A/62/40				X
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU1 and A/57/40 and A/60/40 (annex V to this report) A/62/40				X
	941/2000, *Young* A/58/40	X A/58/40, A/60/40 (annex V to this report) A/62/40		X		X
	1011/2002, *Madaferri* A/59/40	X A/61/40	X			

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
	1014/2001, *Baban et al.* A/58/40	X A/60/40 (annex V to this report) A/62/40		X		X
	1020/2001, *Cabal and Pasini* A/58/40	X A/58/40, CCPR/C/80/FU1		X*		X
* In CCPR/C/80/FU1 the State party's response is set out. It submitted that it is unusual for two persons to share cells and that it has asked the Victorian police to take the necessary steps to ensure that a similar situation does not arise again. It does not accept that the authors are entitled to compensation. The Committee considered that this case should not be considered any further under the follow-up procedure.						
	1036/2001, *Faure* A/61/40	X A/61/40				X
	1050/2002, *Rafie and Safdel* A/61/40	X A/62/40			X	
	1157/2003, *Coleman* A/61/40	X A/62/40				X A/62/40
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40 (annex V to this report) A/62/40		X		X
	1184/2003, *Brough* A/61/40	X A/62/40			X	X A/62/40
	1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004, *Shams, Atvan, Shahrooei, Saadat, Ramezani,*	Not yet due				

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
	Boostani, Behrooz and Sefed A/62/40					
	1324/2004, Shafiq A/62/40	X A/62/0				X A/62/40
	1347/2005, Dudko A/62/40	Not yet due				
...						

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)...

...

8. The cases C. v. Australia and Shafiq v. Australia (communications Nos. 900/1999 and 1324/2004) related to the detention of asylum-seekers by the State party. In both cases, the authors had been released but had not received any compensation, since the State party had not implemented the Committee's decision on the matter. He therefore suggested that the Committee should express regret that the State party had refused to comply with the Committee's Views, and that it considered the dialogue ongoing. He planned to meet with a representative of the State party before the end of the session, and he would make use of that occasion to try to obtain additional information on those cases.

...

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.

...

CCPR, A/62/40 vol. II (2007)

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).

...

State party	**AUSTRALIA**
Case	C., 900/1999
Views adopted on	28 October 2002
Issues and violations found	Immigration detention of refugee applicant with psychiatric problems - Articles 7, and 9, paragraphs 1 and 4.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. As to the violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting the author to Iran. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	6 February 2003
Date of reply	16 March 2007 (The State party had previously responded on 10 February 2003, 28 September 2004 and 16 August 2006)
State party response	The Committee will recall that, as set out in Annual Reports A/58/40 and A/60/40, the State party had previously advised the Committee that the author had been released from the Maribyrnong Immigration Detention Centre into home detention. He was living in a private home in Melbourne, and was free to move about within the Australian community provided he was in the presence of one of his nominated relatives. On 16 August 2006, the State party confirmed that the author was not currently held in immigration detention. It contested that it

had violated any of the author's rights, reiterated its arguments provided prior to consideration of the communication and provided further information. As to the violation of article 7 with respect to his detention, it referred to the jurisprudence of the ECHR for the proposition that the detention of a mentally ill person for criminal offences did not amount to a breach of article 3 (equivalent to article 7 of the Covenant). It claimed that in finding such a breach, the Committee has placed an obligation on States to release detainees who suffer from mental illness per se in order to comply with article 7, without regard for the circumstances and conditions of each complainant's detention. The Committee does not give any guidance as to how the complainant suffered cruel, inhuman or degrading treatment and does not make clear at which point the complainant's treatment became cruel, inhuman or degrading.

As to the violation of article 7 with respect to his deportation, the State party submitted that the situation in Iran for Assyrian Christians has improved greatly in recent years, such that there is no longer a "real risk" that the complainant will be exposed to a violation of his rights under the Covenant. It referred to one case of the ECHR in which the Court found in favour of the applicant, but only on the bases of the absence of adequate medical facilities in St. Kitts and the fact that he was in an advanced stage of his illness and removal would have precipitated his death. It also submitted that although the drug Clozaril is still not readily available in Iran another equivalent drug "Clozapine" is locally available. Thus, there was no basis for the finding of a violation of article 7 if the author were to be deported. It also stated that there is currently no plan to remove the author but if the situation changes the State party will inform the Committee.

On the violation of article 9, paragraph 1, while the State party denied that the author's detention violated this provision, it submitted that in June 2005, the government announced a number of changes to both the law and the handling of matters relating to people in immigration detention, including that: alternative arrangements rather than tradition detention would be made for the detention of unlawful non-citizen families; all decisions on primary protection visas would occur within three months; all reviews by the Refugee Review Tribunal will occur within three months, regular reporting to Parliament on cases exceeding the time limit; the situation of persons detained for two years or more will be reported upon to the Ombudsman every six months for assessment; the Minister of Immigration and Multicultural Affairs has an additional non-compellable powers to grant visas to

persons in detention and to specify alternative arrangements for a person's detention and conditions to apply; and the Migration Regulations 1994 create a new bridging visa to enable the release of persons in immigration detention into the community whose removal from Australia is not reasonably practicable at the current time. However, the State party maintained its argument that the provisions under which the author was detained were found to be legally valid by the High Court in several decisions, including recent decisions.

The State party submitted that the author had access to judicial review of the lawfulness of his detention at all times, thus satisfying article 9 (4). In its view, this provision does not require that the merits of that detention must be open to review by the court. It aligned itself with the individual opinion of Sir Nigel Rodley. In conclusion, for the reasons expressed above, the State party did not accept that it should pay the complainant compensation.

On 16 March 2007, and in response to a query from the Rapporteur on the status of his detention, the State party clarified that the author has been the holder of a permanent Protection Visa Class 866, since 15 March 1995 and was released from home detention on 10 May 2005.

Author's response

On 19 October 2004, the author responded to the State party's submission of September 2004, confirming that he was in "home detention" but that his movements were restricted as described by the State party. He stated that as the deportation order had not been revoked, he was still at risk of deportation, and no compensation had been paid for his unlawful detention.

Committee's Decision

While welcoming the author's release from detention, the Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.

Case

Winata, 930/2000

Views adopted on

26 July 2001

Issues and violations found

Removal from Australia of Indonesian parents of Australia-born child - Articles 17; 23, paragraph 1; and 24, paragraph 1.

Remedy recommended

To refrain from removing the authors from Australia before they have had an opportunity to have their applications for parent visas

examined, with due consideration given to the protection required by their child's status as a minor.

Due date for State party response 12 November 2001

Date of reply 28 July 2006

State party response The State party contests that it has violated any of the articles of the Covenant with respect to this case and relies on the individual opinions therein. It reiterates its arguments made on the merits. On the violation of article 17, it does not accept that it should refrain from enforcing its migration laws in cases where unlawful non-citizens are said to have established a family life. It refers to other Views of the Committee in which it failed to find violations of article 17 in removal cases where the authors had existing families in the removing State. It cites jurisprudence of the ECHR, which has found inter alia that article 8 (equivalent to article 17) does not recognize a right to choose the most suitable place to develop family life and may not choose the place of residence for their family simply by unlawfully remaining in the country in which it wishes to raise its family.

As to the violation of article 23, the State party submits that this provision does not regulate the details of how the family is specifically to be protected. This provision must be read against the background of the acknowledged right of Australia, under international law, to control the entry, residence and expulsion of aliens. If Mr. Winata and Ms. Li are required to leave Australia, the Government will not prevent their son from leaving with them or travelling to Indonesia to visit them.

Although Barry Winata is no longer a minor, having reached his 18th birthday on 2 June 2006, the State party submits that before he turned 18 he was afforded the same measures of protection as other children in Australia. There is nothing to suggest that he would not eventually adjust to the changes involved in any move to Indonesia. The State party informs the Committee that Mr. Winata and Ms. Li are currently living unlawfully in the State party. They are the subject of an outstanding request under article 417 of the Migration Act 1958 for the Minister of Immigration to use her discretionary power to allow them to remain in Australia. This request will not however be processed until they are located. In the meantime, there are no plans to remove them from Australia and the State party will inform the Committee if this

	situation changes.
Case	Coleman, 1157/2003
Views adopted on	17 July 2006
Issues and violations found	Freedom of expression - Article 19, paragraph 2.
Remedy recommended	An effective remedy, including quashing of his conviction, restitution of any fine paid by the author pursuant to his conviction, as well as restitution of court expenses paid by him, and compensation for the detention suffered as a result of the violation of his Covenant right.
Due date for State party response	2 November 2006
Date of reply	5 February 2007
State party response	The State party does not accept the Committee's view that the reaction to the author's conduct amounted to a breach of article 19 (2) of the Covenant. It reiterates its submission that section 8 (2) (e) of *Townsville City Council Local Law No. 39* ("the Council By-Law") is a restriction on freedom of expression which is provided by law and necessary for the protection of public order and therefore permitted by article 19 (3) (b) of the Covenant. It agrees with the statement contained in the concurring individual opinions of Committee members Mr. Nisuke Ando, Mr. Michael O'Flaherty and Mr. Walter Kälin that it is wholly consistent with the Covenant to have in place a permit system to strike appropriate balances between freedom of expression and countervailing interests. Such a permit system is designed to balance the rights of individuals to exercise their freedom of expression and the legitimate countervailing interests of the community generally, and in particular other users of the pedestrian mall, including the public in having a shopping environment which is free from undue noise or interference, the traders and shop owners in ensuring that potential customers have access to their shops and a pleasant environment in the mall is maintained, other individuals or groups who may wish to legitimately use the public space for other activities; or other individuals who may also wish to exercise their freedom of expression.

The State party acknowledges that the mere existence of some permit systems which are of extremely broad application may amount to an unacceptable restriction on freedom of expression. By contrast, the Council By-Law only requires a permit in a relatively small public area and leaves other areas of the city available for public speeches. The Council By-Law also allows a political speech such as the one given by the author to be given within the pedestrian mall without a permit, provided the speech is given from a booth set up for political purposes. It refers to the Committee's jurisprudence for the preposition that the right to freedom of expression does not guarantee an unfettered right to use a particular premises or area.[1] The critical issue is whether the application of the permit system by the authorities to the particular circumstances of the author's case was permissible under article 19 (3). The author declined to seek a permit and therefore did not afford the authorities the opportunity to grant or deny a permit. In fact, in proceedings in the District Court of Queensland, where the District Court dismissed an appeal by the author against his conviction against the Council By-Law, as well as in correspondence with various authorities concerning the conviction, the author maintained that he did not or should not be required to obtain a permit. The author had previously engaged in activities in the mall as part of his "free speech" campaign, which were seen by the Council (and allegedly by members of the general public) as disruptive and detracting from the enjoyment of the mall by the general public, particularly during the mall's busiest days, such as days on which the "Cotters Market" were held. The Council had, as a result of Mr. Coleman's campaign, agreed to introduce a designated podium to allow persons to give addresses.

The address giving rise to the author's complaint was given on 20 December 1998, a day when the "Cotters Market" was taking place at the pedestrian mall. The Council has indicated that "Mr. Coleman would be likely to receive a permit if he applied for one for a day other than a Cotters Market day, and that Council would be likely to arrange for an alternative venue to the Flinders Mall if Mr. Coleman remained committed to making the address on a Cotters Market day".

The State party also notes that the detention of the author which eventually resulted from the offence was not merely a result of the author giving a public address without a permit, but was a result of the author's refusal to pay the fine imposed for this offence by the Queensland Magistrate's Court. In the author's conviction in

	the Queensland Magistrate's Court, the prosecution submitted that a fine should be imposed due to the contempt with which the author treated the Magistrate's Court proceedings. Nevertheless the Magistrate canvassed a number of alternative sentencing options permitted under Queensland law including probation orders or community service orders. These alternative options were refused by the author, apparently based on his belief that he should be entitled to give public addresses in the mall without requiring a permit. The author had also refused offers from other people to pay the fine on his behalf. His failure to pay resulted in his arrest, during which he also resisted arrest and was charged with obstructing a police officer. The decision to imprison him appears to be influenced by his repeated history of breaching the Council By-Law both before and after the occasion in question, and his persistent refusal to accept the legitimacy of any sanctions for his disregard of the Council By-Law. The State party submits that consideration should be given to the overall circumstances of the case. Based on these circumstances the Australian Government believes that the treatment of the author was not disproportionate and does not accept the view that he is entitled to any remedy.
Committee's Decision	The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.
Case	Brough, 1184/2003
Views adopted on	17 March 2006
Issues and violations found	Detention of a juvenile aborigine - Articles 10 and 24, paragraph 1.
Remedy recommended	Effective remedy, including adequate compensation.
Due date for State party response	6 July 2006
Date of reply	15 February 2007
State party response	The State party maintains its view that the communication is inadmissible and does not accept the Committee's view that it violated any of the author's rights. It submits that the Committee did not give due weight to the fact that the author was involved in

a serious incident at the Kariong Juvenile Detention Centre, which indicated significant risk implications for the safety of the author himself and his fellow inmates during his time at the Parklea Correctional Centre. The Committee failed to note that the author was not transferred directly from Kariong Juvenile Detention Centre to Parklea Correctional Centre. As submitted in its response to the Committee, he spent 10 days at the Metropolitan Remand and Reception Centre (MRRC) before he was transferred to Parklea Correctional Centre. He was received by this Centre as a result of behaviour in the juvenile system that could not be safely managed in that environment. During these 10 days he was assessed and staff prepared a management plan which identified his risks and needs and ways in which they could be addressed. His experiences at Parklea cannot be considered in isolation from the behaviour that preceded his placement there. His self-harming behaviour was exhibited before this introduction into this facility and should be understood as a manifestation of his complex and challenging personality, rather than an outcome of his treatment. His behaviour while in custody represented the continuation of a long-term pattern, which began in 1994 at the age of 12 and which the staff at Parklea were attempting to manage. The Committee did not advance that the author had seen a psychologist on several occasions while in his safe cell. Further details of his treatment could not be provided, as the author refused to consent to the release of medical records.

The State party sets out a number of changes introduced since 1999 designed to enhance the management of offenders with complex needs. Risk intervention protocols have been revised to ensure a greater emphasis on interaction with those inmates who have been identified as being at risk of self-harm or suicide. This includes a Reception Assessment for new inmates to identify “at risk” inmates and necessary arrangements for their safety. A Mental Health Screening Unit was opened in early 2006 at the main male adult reception gaol at Silverwater. This unit forms part of the second tier integrated system that allows for the identification of and intervention for persons with a mental illness entering a correctional facility. Another screening unit for women is nearing completion at the Maulawa Correctional Centre.

There have been improvements at the Parklea Correctional Centre where inmates have access to specialised mental health staff who work closely with the Department of Corrective Services staff at MRRC at the Silverwater Correctional Centre to ensure persons with a mental illness are managed appropriately. There have also been improvements in the range of psychotropic medications

available to treat mentally-ill patients.

The Department of Corrective Services now has responsibility for the management of Kariong Juvenile Correctional Centre, so that the management of juvenile inmates in this centre is now based on the same system of case management as within adult correctional centres. This means that it is less likely to be necessary to transfer an offender under the age of 18 to an adult prison for management.

The New South Wales Government has developed a plan to address the needs of Aboriginal people, which includes initiatives relating to justice, education and health. This initiative will implement programs focussing on early intervention, diversion and breaking the cycle family violence to reduce the over-representation of Aboriginal people in the criminal justice system.

Author's response On 30 April 2007, the author responded to the State party's submission. He regrets the State party's response noting that it failed to address the substance of the complaint made by him. It focused on the programmes undertaken by him since 2005 but not on the substantive issues raised in the communication. It failed also to address his transfer to adult correctional facilities and his treatment whilst at an adult correctional facility in breach of articles 10 and 24.
(This information was added after the consideration of the report for the purposes of inclusion in the annual report.)

Case Shafiq, 1324/2004

Views adopted on 31 October 2006

Issues and violations found Mandatory immigration detention and no right to review - Article 9, paragraphs 1 and 4.

Remedy recommended An effective remedy, including release and appropriate compensation.

Due date for State party response 6 February 2007

Date of reply 25 May 2007

State party response The State party states that on 21 March 2007, the Minister for

Immigration and Citizenship granted the author a Removal Pending Bridging Visa (RPBV) and he was released from detention. The RPBV was introduced by the Australian Government in May 2005. It provides for the release from detention, pending removal from Australia, of persons in immigration detention whose removal is not reasonably practicable at the time. A RPBV may be granted using the non-delegable power of the Minister for Immigration to grant a visa to a person in immigration detention if the Minister thinks it is in the public interest to do so. This power is provided for in section 195A of the *Migration Act 1958* (Migration Act).

As a RPBV holder, the author is entitled to a range of social support benefits: work rights and job matching through Centrelink; access to certain Centrelink benefits, such as Special Benefit and Rent Assistance; access to Medicare benefits; access to the Early Health Assessment and Intervention services; eligibility for torture and trauma counseling. Since the grant of the RPBV, Mr. Shafiq is no longer in any form of immigration detention. He remains voluntarily in the suburb of Glenside in Adelaide and attends the Royal Adelaide Hospital Psychiatric Campus in that suburb where he is being treated for a mental illness.

The State party contests that it has violated article 9 (4), as in its view the obligation on State parties is to provide for review of the lawfulness of detention. There can be no doubt that the term "lawfulness" refers to the Australian domestic legal system. There is nothing apparent in the terms of the Covenant that "lawful" was intended to mean "lawful at international law" or "not arbitrary". The author had the opportunity, as a person in immigration detention in Australia, to take proceedings before the High Court of Australia to determine the legality of the decision to detain him under the Migration Act. He could have sought to invoke the original jurisdiction of the High Court under section 75 of the Australian Constitution to obtain a writ of mandamus or other appropriate remedy to enable him to be released from detention. He could have also sought this remedy in the Federal Magistrates Court pursuant to section 476 of the Migration Act. Finally, he could have also sought the remedy of habeas corpus in the High Court or the Federal Court.

In light of the above, the State party does not accept that the author is entitled to be paid compensation pursuant to article 2 (3) (a).

Committee's Decision	While welcoming the author's release from detention, the Committee regrets the State party's refusal to accept the Committee's Views, notes that no compensation has been provided, and considers the dialogue ongoing.

...

1/ *Ernst Zündel v. Canada*, communication No. 953/2000, *Auli Kivenmaa v. Finland*, communication No. 412/1990.

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE
Ninety-third session
SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL

...

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

41. In the first case, involving Australia, a detailed response had been received from the State party in May 2008; it indicated that, owing to an amendment to the rules of procedure of the High Court of Australia, most appeal applications were considered on paper, and oral proceedings were only heard in a few cases. Counsel would be assigned in the event of oral proceedings. It was therefore unlikely that cases similar to that of the author would arise again in future. The State party's response had been sent to the author with a two-month deadline for comments. That deadline had not yet been reached, and the Committee could therefore consider the dialogue ongoing.

...The meeting rose at 1.05 p.m.

CCPR, A/63/40 vol. I (2008)

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.

...						
Australia (24)	488/1992, *Toonen* A/49/40	X A/51/40	X			
	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	802/1998, *Rogerson* A/58/40	Finding of a violation was considered sufficient.	X			
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU/1 A/60/40, A/62/40				X
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU/1 A/57/40, A/60/40 A/62/40 and A/63/40				
	941/2000, *Young* A/58/40	X A/58/40, A/60/40 A/62/40 and A/63/40		X		X

	1011/2002, *Madafferi*A/59/40	XA/61/40	X			
	1014/2001, *Baban et al.* A/58/40	X A/60/40, A/62/40		X		X
	1020/2001, *Cabal and Pasini* A/58/40	X A/58/40, CCPR/C/80/FU/1		X [a]		X
	1036/2001, *Faure* A/61/40	X A/61/40				X
Australia (*cont'd*)	1050/2002, *Rafie and Safdel* A/61/40	X A/62/40 and A/63/40				X
	1157/2003, *Coleman* A/61/40	X A/62/40				X A/62/40
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40, A/62/40		X		X
	1184/2003, *Brough* A/61/40	X A/62/40				X A/62/40
	1255, 1256, 1259, 1260, 1266, 1268, 1270, and 1288/2004, *Shams, Atvan, Shahrooei,*	X A/63/40				X

	Saadat, *Ramezani*, *Boostani*, *Behrooz* and *Sefed* A/62/40					
	1324/2004, *Shafiq* A/62/40	X A/62/40 and A/63/40				X A/62/40
	1347/2005, *Dudko* A/62/40	X A/63/40				X A/63/40
...						

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a/ The State party's response is set out in CCPR/C/80/FU/1. The State party submits that it is unusual for two persons to share cells and that it has asked the Victoria police to take the necessary steps to ensure that a similar situation does not arise again. It does not accept that the authors are entitled to compensation. The Committee considered that this case should not be considered any further under the follow-up procedure

...

CCPR, A/63/40, vol. II (2008)

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).

...

State party	**AUSTRALIA**
Case	**Winata, 930/2000**
Views adopted on	26 July 2001
Issues and violations found	Removal of the authors from the country constituted arbitrary interference with family life. Articles 17, 23, paragraph 1, 24, paragraph 1.
Remedy recommended	Effective remedy, including refraining from removing the authors from Australia before they have had an opportunity to have their application for parent visas examined, with due consideration given to the protection required by Barry Winata's status as a minor.
Due date for State party response	October 2001
Date of reply	Several responses provided from December 2001; last one dated 15 October 2007
State party response	Mr. Winata and Ms. Li are in contact with the Department of Immigration and Citizenship of the Australian Government and are currently residing lawfully in the community on Bridging E visas. Barry Winata, their son now aged 19, is an Australian citizen. Further dialogue on the matter "is not considered to be fruitful" by the State party.
Author's comments	Not yet received.

Committee's Decision	The Committee considers that no further dialogue is necessary on this case and decided that this case should not be considered any further under the follow-up procedure.
Case	**Young, 941/2000**
Views adopted on	6 August 2003
Issues and violations found	Discrimination on grounds of sexual orientation in provision of social security benefits, article 26.
Remedy recommended	Effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law.
Due date for State party response	1 December 2003
Date of reply	October 2006 and 15 October 2007
State party response	The State party recalls its previous refusal to accept the Committee's findings and recommendations. It states that "further dialogue on this matter would not be fruitful and declines the offer to provide more information".
Author's comments	Not yet received.
Committee's Decision	The Committee regrets the State party's refusal to accept the Views and recommendations. It considers the dialogue ongoing.
Case	**Shafiq, 1324/2004**
Views adopted on	31 October 2006
Issues and violations found	Arbitrariness of mandatory immigration detention for a period of over seven years; denial of right to have his detention reviewed by a court. Article 9, paragraphs 1 and 4.
Remedy recommended	Effective remedy, including release and appropriate compensation.
Due date for State party response	February 2007

Date of reply	25 May 2007, 15 October 2007
State party response	During the ninetieth session the Committee decided: "while welcoming the author's release from detention, the Committee regrets the State party's refusal to accept the Views, notes that no compensation has been provided, and considers the dialogue ongoing". In October 2007, the State party reported that Mr. Shafiq's visa status remained unchanged since the information provided earlier, i.e. he remains in the community on a Removal pending bridging visa. "Further dialogue on the matter will not be fruitful", according to the State party.
Author's comments	Not yet received.
Committee's Decision	The Committee regrets the State party's refusal to accept the Views. It considers the dialogue ongoing.
Case	**Dudko, 1347/2005**
Views adopted on	23 July 2007
Issues and violations found	Absence of unrepresented defendant during appeal - article 14, paragraph 1.
Remedy recommended	Effective remedy.
Due date for State party response	13 November 2007
Date of reply	27 May 2008
State party response	On 27 May 2008, the State party informed the Committee of new rules of court adopted by the High Court in 2004, which took effect from 1 January 2005. In recognition of the nature of special leave applications, these rules give primary emphasis to written arguments. If an applicant for special leave to appeal is not represented by a legal practitioner that applicant must present his or her argument to the Court in the form of a draft notice of appeal and written case. These documents are considered by two justices who decide either that the papers should be served on the respondent or that the application should be dismissed without calling on the respondent to answer. Any application for special leave that has been served on the respondent (whether represented

	by a lawyer or not) may be decided without listing the application for hearing. Most applications for special leave are now decided by the Court without oral hearing. If the application reveals that the Court may be assisted by oral argument, the application will be listed for hearing. In that event, if one of the parties is not represented by counsel, the Court will generally seek to arrange for counsel to appear for the party concerned without charging a fee. According to the State party, these changes reduce the likelihood of a situation such as the author's arising again. The State party also reaffirms that the outcome of the author's case was not affected by her absence or the absence of counsel appearing on her behalf.
Author's response	None
Committee's Decision	The Committee considers the dialogue ongoing.
Case	**D. & E., 1050/2002**
Views adopted on	11 July 2006
Issues and violations found	Arbitrary detention of asylum-seekers, including children - article 9, paragraph 1.
Remedy recommended	An effective remedy, including appropriate compensation.
Due date for State party response	
Date of reply	July 2007
State party response	The State party informed the Committee that it does not accept its view that there has been a violation of article 9, paragraph 1 of the Covenant and reiterates its submission that the detention was reasonable and necessary. It does not accept the Committee's view that it should pay compensation to the authors. It reiterates its arguments provided on the merits as well as recent decisions of the High Court, which upheld the validity of sections 189, 196 and 198 of the Migration Act. The authors were granted Bridging visas E (subclass 051) in January 2004. They were released from detention on 22 January 2004, as they satisfied one of the criteria under regulation 2.20 of the Migration Regulations 1994. They were granted Global Special Humanitarian visas as a result of Ministerial intervention on 13 March 2006. The State party informs the Committee of subsequent changes to its Migration

	Amendment (Detention Arrangement) Act 2005, which amended the Migration Act 1958 with effect from 29 June 2005. (See the State party's response to Saed Shams, Kooresh Atvan, Shahin Shahrooei, Payam Saadat, Behrouz Ramezani, Behzad Boostani, Meharn Behrooz, and Amin Houvedar Sefed, 1255/2004, 1256/2004, 1259/2004, 1260/2004, 1266/2004, 1268/2004, 1270/2004, 1288/2004, below for details.)
Author's response	None
Case	**Saed Shams, Kooresh Atvan, Shahin Shahrooei, Payam Saadat, Behrouz Ramezani, Behzad Boostani, Meharn Behrooz, and Amin Houvedar Sefed, 1255/2004, 1256/2004, 1259/2004, 1260/2004, 1266/2004, 1268/2004, 1270/2004, 1288/2004**
Views adopted on	20 July 2007
Issues and violations found	Arbitrary detention and review of lawfulness - article 9, paragraphs 1 and 4, and article 2, paragraph 3.
Remedy recommended	An effective remedy should include adequate compensation for the length of the detention to which each of the authors was subjected.
Due date for State party response	11 December 2007
Date of reply	25 June 2008
State party response	The State party informs the Committee that Messrs. Atvan, Behrooz, Boostani, Ramezani, Saadat, and Shams have been granted permanent Protection visas, which allow them to remain in Australia indefinitely. As noted in the Committee's views, Mr Shahrooei and Mr Sefed had been granted permanent Protection visas before the Committee adopted its views. Mr Houvedar Sefed was granted Australian citizenship on 10 October 2007. As to the violation of article 9, paragraph 1, the State party acknowledges its obligation under the Covenant not to subject any person to arbitrary detention, and further acknowledges that there are some circumstances in which the lawful and permissible detention of a person may become arbitrary if there are no longer any grounds to justify it. The State party will retain the system of mandatory detention (along with

tough anti-people smuggling measures) to ensure the orderly processing of migration to the country. However, it is committed to reviewing the conditions, period and forms of managing detention. In 2005 the State party's Government announced a number of changes to both the law and the handling of matters relating to people in immigration detention and the processing of Protection visa applications. These changes include:

(1) That where detention of an unlawful non-citizen family (with children) is required under the Migration Act 1958 (Migration Act), detention should be under alternative arrangements (that is, in the community under residence determination arrangements [now known as community detention] at a specified place in accordance with conditions that address their individual circumstances), where and as soon as possible, rather than under traditional detention; (2) All primary Protection visa applications are to be decided by the Department of Immigration and Citizenship (DIAC) within 90 days of application lodgement; (3) All reviews by the Refugee Review Tribunal are to be finalized within 90 days of the date the Tribunal receives the relevant files from DIAC; (4) Regular reporting to Parliament on cases exceeding these time limits is required; (5) Where a person has been in detention for two years or more there will automatically be a requirement that every six months a report on that person be furnished by DIAC to the Commonwealth Ombudsman. The Ombudsman's assessment of each report, including recommendations on whether the person should be released from detention, will be tabled in Parliament; (6) The provision in the Migration Act of an additional non-compellable power for the Minister for Immigration and Citizenship to specify alternative arrangements for a person's detention and conditions to apply to that person and to act personally, to grant a visa to a person in detention; and the amendment of the Migration Regulations 1994 to create a new bridging visa to enable the release of persons in immigration detention into the community whose removal from Australia is not reasonably practicable at the current time. A Removal pending bridging visa may be granted using the Minister for Immigration and Citizenship's non-delegable, non-compellable public interest power to grant a visa to a person in immigration detention. These legislative changes necessary to give effect to the reforms were contained in the Migration Amendment (Detention Arrangements) Act 2005 and the Migration and Ombudsman Legislation Amendment Act 2005. The State party has also introduced Detention Review Managers (DRMs), who independently review the initial decision to detain a person and

continue to review the cases of people in immigration detention on an ongoing basis to ensure their detention remains lawful and reasonable. Since its election on 24 November 2007, the State party has ended the “Pacific Strategy”, under which unauthorized boat arrivals who raised protection claims were assessed at offshore processing centres in Nauru and Manus Province, Papua New Guinea. In February 2008, the last asylum-seekers to be processed in an offshore centre were granted humanitarian visas and resettled in Australia. All future unauthorized boat arrivals who raise refugee claims will be taken to Christmas Island, an Australian territory, where their claims will be processed under existing refugee status assessment arrangements. The Minister for Immigration and Citizenship has completed a review of the cases of persons who have been in immigration detention for more than two years. The review, conducted personally by the Minister, sought to apply a range of measures to progress, if not resolve, the immigration status of these detainees. A number were granted visas as a result of the review, enabling their release from immigration detention. Others were removed from immigration detention centres and placed in community detention. The Minister's review was underpinned by the principle that indefinite detention is not acceptable. This demonstrates the State party's commitment to promptly resolve the immigration status of all persons. The State party will only detain persons in immigration detention centres as a last resort and will only do so for the shortest practicable time.

As to the violation of article 9 (4), the State party argues that there can be no doubt that the term “lawfulness” refers to the Australian domestic legal system, and was not intended to mean “lawful at international law” or “not arbitrary”. It does not accept it owes the authors compensation under article 2 (3).

Author's response The State party's submission was sent to the authors on 27 June 2008, with a deadline of two months for comments.

Committee's Decision The Committee considers the dialogue ongoing.

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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.

...						
Australia (24)	488/1992, *Toonen* A/49/40	X A/51/40	X			
	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	802/1998, *Rogerson* A/58/40	Finding of a violation was considered sufficient.	X			
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU/1 A/60/40, A/62/40				X
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU/1 A/57/40, A/60/40 A/62/40 and A/63/40				
	941/2000, *Young*A/58/40	XA/58/40, A/60/40		X		X

		A/62/40 and A/63/40				
	1011/2002, *Madafferi* A/59/40	X A/61/40	X			
	1014/2001, *Baban et al.* A/58/40	X A/60/40, A/62/40		X		X
Australia (*cont'd*)	1020/2001, *Cabal* and *Pasini* A/58/40	X A/58/40, CCPR/C/80/FU/1		X*		X
	**Note*: The State party's response is set out in CCPR/C/80/FU/1. The State party submits that it is unusual for two persons to share cells and that it has asked the Victoria police to take the necessary steps to ensure that a similar situation does not arise again. It does not accept that the authors are entitled to compensation. The Committee considered that this case should not be considered any further under the follow-up procedure.					
	1036/2001, *Faure* A/61/40	X A/61/40				X
	1050/2002, *Rafie* and *Safdel* A/61/40	X A/62/40 and A/63/40				X
	1157/2003, *Coleman* A/61/40	X A/62/40				X A/62/40
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40, A/62/40		X		X

	1184/2003, *Brough* A/61/40	X A/62/40				X A/62/40
	1255, 1256, 1259, 1260, 1266, 1268, 1270, and 1288/2004, *Shams*, *Atvan*, *Shahrooei*, *Saadat*, *Ramezani*, *Boostani*, *Behrooz* and *Sefed* A/62/40	X A/63/40				X
	1324/2004, *Shafiq* A/62/40	X A/62/40 and A/63/40				X A/62/40
	1347/2005, *Dudko* A/62/40	X A/63/40				X A/63/40
...						

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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).

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State party	**Australia**
Case	***Dudko, 1347/2005***
Views adopted on	27 July 2007
Issues and violations found	Absence of unrepresented defendant during appeal – article 14, paragraph 1
Remedy recommended	Effective remedy
Due date for State party response	25 August 2008
Date of State party response	27 May 2008
State party response	On 27 May 2008, the State party had informed the Committee of new Rules of Court adopted by the High Court in 2004, which took effect from 1 January 2005. In recognition of the nature of special leave applications, these rules give primary emphasis to written arguments. If an applicant for special leave to appeal is not represented by a legal practitioner that applicant must present his or her argument to the Court in the form of a draft notice of appeal and written case. These documents are considered by two Justices who decide either that the papers should be served on the respondent or that the application should be dismissed without calling on the respondent to answer. Any application for special leave that has been served on the respondent (whether represented by a lawyer or not) may be decided without listing

	the application for hearing. Most applications for special leave are now decided by the Court without oral hearing. If the application reveals that the Court may be assisted by oral argument the application will be listed for hearing. In that event, if one of the parties is not represented by counsel, the Court will generally seek to arrange for counsel to appear for the party concerned without charging a fee. According to the State party, these changes reduce the likelihood of a situation such as the author's arising again. The State party also reaffirms that the outcome of the author's case was not affected by her absence or the absence of counsel appearing on her behalf.
Author's comments	On 24 August 2008, the author responded to the State party's submission. Her Counsel stated that he considers it unfair that, according to the new rules, it will be at the discretion of two judges how the papers are served on the applicant. In addition, the new rules do not change the situation for an applicant who does not have legal assistance. Thus, the amended rules are not an adequate remedy as the right to legal assistance is "absolute".
Committee's Decision	The dialogue is ongoing.

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