

SIERRA LEONE

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR

Mansaraj et al., Gborie et al. and Sesay et al. v. Sierra Leone

Communications Nos 839, 840 & 841/1998

4 November 1998

CCPR/C/64/D/839, 840 & 841/1998

INTERIM DECISION

Submitted by: Gilbert Samuth Kandu-Bo, Khemalai Idrissa, Tamba Gborie, Alfred Abu Sankoh, Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh

Victim: The authors

State Party: Sierra Leone

Date of communication: 13 and 14 October 1998

The Human Rights Committee,

Meeting on 4 November 1998,

Acting under the International Covenant on Civil and Political Rights and its Optional Protocol,

Referring to the cases of Gilbert Samuth Kandu-Bo, Khemalai Idrissa, Tamba Gborie, Alfred Abu Sankoh, Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh, whose communications were submitted to the Human Rights Committee under the Optional Protocol on 13 and 14 October 1998,

Recalling that the Committee's Special Rapporteur for New Communications requested the Government of Sierra Leone on 13 and 14 October 1998, under rule 86 of the Committee's rules of procedure, to stay the execution of the above mentioned persons while their communication was under consideration by the Committee,

Deeply disturbed by the information that Gilbert Samuth Kandu-Bo, Khemalai Idrissa, Tamba Gborie, Alfred Abu Sankoh, Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh were executed by firing squad outside Freetown on 19 October 1998,

Recalling that on 23 October 1998, an urgent request to provide clarifications, by 29 October 1998, about the circumstances surrounding the executions of the above named persons, was sent to the State party both through its Permanent Mission in New York and the Office of the Secretary General's Special Representative in Freetown,

Noting that no information has been received from the State party,

1. Expresses its indignation at the failure of the State party's authorities to comply with the Committee's request for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure; the attitude displayed by the State party is all the more regrettable as it concerned cases involving capital punishment of which the Committee was properly seized and was competent to examine, and as it occurred in the context of the consideration of the first cases submitted to the Committee since the Optional Protocol entered into force for Sierra Leone on 23 November 1996;
2. Recalls that the State party, upon ratifying the Optional Protocol, undertook to cooperate with the Committee under the procedure, and emphasizes that the State party has failed to comply with its obligations, both under the Optional Protocol and under the Covenant;
3. Deplores the State party's failure to make available, as requested by the Committee, specific clarifications of the circumstances surrounding the executions;
4. Decides to continue the consideration of the above mentioned communications under the Optional Protocol;
5. Strongly urges the State party to ensure, by all means at its disposal, that situations similar to those surrounding the executions of the above mentioned persons do not recur; in particular, the Committee urges compliance with its rule 86 requests in other cases of a similar nature of which the Committee is seized;
6. Urges the State party to present without delay its initial report under article 40 of the Covenant, which was due on 22 November 1997, for discussion by the Committee at its 65th session in March/April 1999 and, in any event, to submit by 15 February 1999 a report, in summary form if necessary, relating in particular to the application at the present time of articles 6, 7 and 14 of the Covenant;
7. Requests the Secretary-General to bring this decision to the attention to the Government of Sierra Leone.

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.

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Sierra Leone: Views in three cases with findings of violations:

839/1998 - Mansaraj et al. (A/56/40);

840/1998 - Gborie et al. (A/56/40); and

841/1998 - Sesay et al. (A/56/40); for follow-up replies, see paragraph [249] below.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

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

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

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249. Sierra Leone: With regard to cases Nos. 839/1998 - Mansaraj et al., 840/1998 - Gborie et al.,

and 841/1998 - Sesay et al. (A/56/40), the Special Rapporteur held consultations with the Ambassador of Sierra Leone at the seventy-fourth session, who indicated that the six persons in question had been released. The State party further informed the Committee by a note verbale of 5 April 2002 that a right of appeal from courts martial had been re-instated, but that it was otherwise not in a position to comply with the Committee's Views, for the Committee did not have jurisdiction to hear the complaint.

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

CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Sierra Leone: Views in three cases with findings of violations:

839/1998 - *Mansaraj et al.* (A/56/40);

840/1998 - *Gborie et al.* (A/56/40);

841/1998 - *Sesay et al.* (A/56/40); for follow-up replies, see A/57/40, paragraph 249.

Notes

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

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

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

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

Follow-up progress report

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

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SIERRE LEONE:

Mansaraj et al. v. Sierre Leone, Case no. 839/1998, Views adopted on 16 July 2001
Gborie Tamba, v. Sierre Leone, Case no. 840/1998, Views adopted on 16 July 2001
Sesay et al. V. Sierre Leone, Case no. 841/1998, Views adopted on 16 July 2001

Violations found: Articles 6 and 14, paragraph 5

Issues of case: No right of appeal by conviction from court martial

Remedy recommended: To provide Anthony Mansaraj, Alpha Saba Kamara, Nelson Williams, Beresford R. Harleston, Bashiru Conteh and Arnold H. Bangura, with an effective remedy. The Committee considered that they should be released unless Sierra Leonian law provides for the possibility of fresh trials that do offer all the guarantees required under article 14 of the Covenant. The Committee also considers that the next of kin of Gilbert Samuth Kandou-Bo, Khemalai Idrissa Keita, Tamba Gborie, Alfred Abu Sankoh (alias Zagalo), Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh should be afforded an appropriate remedy which should entail compensation.

Deadline for State party follow-up information: 28 October 2001

Follow-up information received from State party: By note verbale of 5 April 2002, the State party informed the Committee that a right of appeal from courts martial had been re-instated, but that it was otherwise not in a position to comply with the Views, as the Committee "did not have jurisdiction to hear the complaint".

Follow-up information received from authors: None

Consultations with State party: At the 74th session, the Special Rapporteur met with the State party representative who indicated that the six persons in question had been released, but also indicated that the Committee had no jurisdiction to hear complaints.

Special Rapporteur's recommendations: Although welcoming the State party's decision to amend its legislation and information that it has released the six living authors, the State party should re-consider its decision not to grant the families of the deceased victims compensation as requested by the Committee, so as to fully implement the Committee's Views.

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CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York,
on Friday, 2 April 2004, at 10 a.m.

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Follow-up on Views under the Optional Protocol

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2. **Mr. Ando**, speaking as a Special Rapporteur for follow-up on Views under the Optional Protocol, noted that his report covered the period from 1 March 2001 to 26 March 2004. As a result of the Committee's Views, death sentences had in some cases been reduced to life imprisonment or to a sentence of 20 years, indicating the success of the Committee's work regarding individual communications. There had been many cases in which States had provided no response to the Committee's Views, and those cases, in turn, came under several headings. Those in which it had been necessary simply to send a reminder were not problematical. Wherever the Committee required a further update on the situation, he had tried to meet with representatives of State parties. Very often they would send a request to their home Government, but that did not necessarily mean that the response would be forthcoming in time for the Committee's following session. At times State parties disagreed with the Committee's Views and requested a reconsideration. Since the Committee had never reconsidered its Views, he always told the State party that there was no precedent for reconsideration unless the author contacted the Committee with new information. He would welcome guidance from Committee members concerning how to deal appropriately with such cases. State parties had complied with the Committee's Views in roughly one-third of cases. In some cases, State parties had clearly indicated that they had no intention of implementing the Committee's Views, sometimes stating that the Views had the force of recommendations only. In that regard, too, he would welcome guidance from Committee members.

3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

5. ...With regard to the cases in Sierra Leone, although the six surviving authors had been released, there was no information as to whether the families of the 12 who had been executed had been compensated....

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Sierra Leone: Views in three cases with findings of violations:

839/1998 - *Mansaraj et al.* (A/56/40);

840/1998 - *Gborie et al.* (A/56/40);

841/1998 - *Sesay et al.* (A/56/40); for follow-up replies, see A/57/40, paragraph 249. In the follow-up report (CCPR/C/80/FU), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that while he welcomed the State party's decision to amend its legislation and the information provided that it has released the six living authors, the State party should reconsider its decision not to grant the families of the deceased victims compensation as requested by the Committee, so as to fully implement the Committee's Views.

Notes

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

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

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Sierra Leone (3)	839/1998, <i>Mansaraj et al.</i> A/56/40	X A/57/40, A/59/40				X
	840/1998, <i>Gborie et al.</i> A/56/40	X A/57/40, A/59/40				X
	841/1998, <i>Sesay et al.</i> A/56/40	X A/57/40, A/59/40				X

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

...

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
...						
Sierra Leone (3)	839/1998, <i>Mansaraj et al.</i> A/56/40	X A/57/40, A/59/40				X
	840/1998, <i>Gborie et al.</i> A/56/40	X A/57/40, A/59/40				X
	841/1998, <i>Sesay et al.</i> A/56/40	X A/57/40, A/59/40				X
...						

...

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-belayed 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
...						
Sierra Leone (3)	839/1998, <i>Mansaraj et al.</i> A/56/40	X A/57/40, A/59/40				X
	840/1998, <i>Gborie et al.</i> A/56/40	X A/57/40, A/59/40				X
	841/1998, <i>Sesay et al.</i> A/56/40	X A/57/40, A/59/40				X
...						