

DEMOCRATIC REPUBLIC OF THE CONGO

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:

...

Zaire: Ten views finding violations; no follow-up reply received from the State party, in spite of two reminders addressed to it.

...

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

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

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Zaire (no reply in respect of 10 cases).

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

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Democratic Republic of the Congo (formerly Zaire) 11 Views finding violations: 16/1977 - Mbengue, 90/1981 - Luyeye, 124/1982 - Muteba, 138/1983 - Mpandanjila et al., 157/1983 - Mpaka Nsusu; and 194/1985 - Miango (Selected decisions, vol. 2);^{13/} 241/1987 and 242/1987 - Birindwa and Tshisekedi (1990 Report);^{14/} 366/1989 - Kanana (1994 Report);^{9/} 542/1993 - Tshishimbi (1996 Report).^{10/} No State party follow-up reply has been received in respect of any of the above cases, in spite of two reminders addressed to the State party.

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

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

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Democratic Republic of the Congo (formerly Zaire): 11 cases;

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555. The Committee urges those States parties to reply to the Special Rapporteur's requests for

^{13/} [International Covenant on Civil and Political Rights. Human Rights Committee. Selected decisions under the Optional Protocol] (CCPR/C/OP/2) (United Nations publication, Sales No. 89.XIV.1), vol. 2.

^{14/} Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40).

^{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).
follow-up information within the deadlines that have been set.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Democratic Republic of the Congo (formerly Zaire): 10 Views finding violations: 16/1977 -Mbengue, 90/1981 - Luyeye, 124/1982 - Muteba, 38/1983 -Mpandanjila et al., 157/1983 - Mpaka Nsusu; and 194/1985 - Miango (Selected decisions, vol. 2);^{3/} 241/1987 and 242/1987 - Birindwa and Tshisekedi (1990 Report (A/45/40)); 366/1989 - Kanana (1994 Report (A/49/40)); 542/1993 - Tshishimbi (1996 Report (A/51/40)). No State party follow-up reply has been received in respect of any of the above cases, in spite of two reminders addressed to the State party.

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Concern over the follow-up mandate

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510. The Committee again expresses its regret that its recommendations, formulated in its 1995, 1996 and 1997 Reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations High Commissioner for Human Rights, have still not been implemented. Similarly, the Committee considers that staff resources to service the follow-up mandate remain inadequate, despite the Committee's repeated requests, and that this prevents the proper and timely conduct of follow-up activities, including follow-up missions. In this context, the Committee expresses serious concern that, because of the lack of staff, no follow-up consultations could be organized during its sixty-second session or at its sixty-third session. It is for this reason that the Committee is unable to include in the present report a complete list of States which have failed to cooperate under the follow-up procedure. States listed in the previous year's report for which replies are still outstanding are: ... Democratic Republic of Congo...

^{3/} [International Covenant on Civil and Political Rights. Human Rights Committee. Selected Decisions under the Optional Protocol] (CCPR/C/OP/2) (United Nations publication,

Sales No. 89.XVI.1), vol. 2.

VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Democratic Republic of Congo (formerly Zaire): Ten Views finding violations: 16/1977 - Mbenge et al., 90/1981 - Luyeye, 124/1982 - Muteba, 138/1983 - Mpandanjila et al., 157/1983 - Mpaka Nsusu, and 194/1985 - Miango (Selected Decisions, vol. 2); 241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40); 366/1989 - Kanana (A/49/40); 542/1993 - Tshishimbi (A/51/40). No follow-up reply has been received in respect of any of the above cases, in spite of two reminders addressed to the State party.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Democratic Republic of the Congo (formerly Zaire): Ten Views finding violations: 16/1977 - Mbenge et al.; 90/1981 - Luyeye; 124/1982 - Muteba; 138/1983 - Mpandanjila et al.; 157/1983 - Mpaka Nsusu, and 194/1985 - Miango (Selected Decisions, vol. 2); 241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40); 366/1989 - Kanana (A/49/40); 542/1993 - Tshishimbi (A/51/40). No follow-up reply has been received in respect of any of the above cases, in spite of reminders addressed to the State party.

Chapter IV. Follow-up Activities under the Optional Protocol

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

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Democratic Republic of the Congo (formerly Zaire): Nine Views concerning 10 cases finding violations: 16/1977 - Mbenge et al.; 90/1981 - Luyeye; 124/1982 - Muteba; 138/1983 - Mpandanjila et al.; 157/1983 - Mpaka Nsusu; and 194/1985 - Miango (Selected Decisions, vol. 2); 241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40); 366/1989 - Kanana (A/49/40); 542/1993 - Tshishimbi (A/51/40).

No follow-up reply has been received in respect of any of the above cases, in spite of reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of Zaire, with a view to discuss follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of Zaire to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply.

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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Democratic Republic of the Congo: Views in nine cases with findings of violations:

16/1977 - Mbenge et al.; see paragraph 17 below, (formerly Zaire)

90/1981 - Luyeye;

124/1982 - Muteba;

138/1983 - Mpandanjila et al.;

157/1983 - Mpaka Nsusu; and

194/1985 - Miango (Selected Decisions, vol. 2);

241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40);

366/1989 - Kanana (A/49/40);

542/1993 - Tshishimbi (A/51/40);

No follow-up reply has been received in respect of any of the above cases, in spite of reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of Zaire, with a view to discuss follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of Zaire to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent Mission, who agreed to transmit the Rapporteur's concerns to Kinshasa and provide a written response. No replies have been received;

641/1995 - Gedumbe (annex IX); follow-up reply not yet due.

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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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239. Democratic Republic of the Congo: With regard to case No. 16/1977 - Mbenge et al. (A/45/40), the author informed the Committee by letter of 3 June 2002 that the State party, both before and after the change of regime, had failed for over a decade to give effect to the Committee's Views. The author remained without the use of his property and had not been compensated for his losses. The authorities had ensured that certain property of other persons was returned to them, but the author had not been treated in like fashion.

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CHAPTER VI. Follow-up activities under the Optional Protocol

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

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Democratic
Republic of
the Congo:

Views in nine cases with findings of violations:

16/1977 - *Mbenge et al.*; see A/57/40, paragraph 239;

90/1981 - *Luyeye*;

124/1982 - *Muteba*;

138/1983 - *Mpandanjila et al.*;

157/1983 - *Mpaka Nsusu* and 194/1985 - *Miango* (*Selected Decisions*, vol. 2);

241/1987 and 242/1987 - *Birindwa and Tshisekedi* (A/45/40);

366/1989 - *Kanana* (A/49/40);

542/1993 - *Tshishimbi* (A/51/40);

641/1995 - *Gedumbe* (A/57/40); no follow-up reply received.

No follow-up reply has been received in respect of any of the above cases, in spite of repeated reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of the State party, with a view to discussing follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of the State party to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent

Mission, who agreed to transmit the Special Rapporteur's concerns to the capital and provide a written response. No replies have been received.

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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DEMOCRATIC REPUBLIC OF THE CONGO:

Mbenge et al v. Democratic Republic of the Congo, Case no. 16/1977, Views adopted on 25 March 1983

Violations found: Articles 6, paragraph 2, and 14, paragraph 3(a), (b), (d), and (e)

Issues of case: Political persecution – political refugee

Remedy recommended: Compensation

Deadline for State party follow-up information: 7 June 1991

Follow-up information received from State party: None

Follow-up information received from author: By letter of 3 June 2002, the author informed the Committee that the State party, both before and after the change of regime, had failed for over a decade to give effect to the Committee's Views. The author has remained without the use of his property and has not been compensated for his losses. The authorities ensured that certain property of other persons was returned to them, but the author had not been treated in like fashion.

Special Rapporteur's recommendations: A reminder should be sent to the State party.

Adrien Mundy Busyo, Thomas Ostudi Wongodi, René Sibum Matubuka et al. v. Democratic Republic of the Congo, Case no. 933/2000, Views adopted on 31 July 2003

Violations found: Articles 25 (c), 14, paragraph 1, 9, and 2, paragraph 1

Issues of case: Unfair dismissal of judges, arbitrary arrest and detention and independency of the judiciary

Remedy recommended: Inter alia: (a) reinstatement of the victims in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; (b) compensation calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement. The State party should ensure that a dismissal measure can be taken only in accordance with the provisions of the Covenant.

Deadline for State party follow-up information: 18 November 2003

Follow-up information received from State party: By letter of 10 October 2003, the State party informed the Committee that "le Gouvernement de la République Démocratique du Congo a chargé le Ministre de la Justice de l'application de la résolution du Dialogue Inter-Congolais relative au cas des 315 magistrats civils et militaires révoqués."

Follow-up information received from author: By email of 9 December 2003, one of the authors informed the Committee that the Presidential Decree, which was the subject of the Committee's Views and on the basis of which the authors had lost their jobs, had been annulled on 25 November 2003. However, he also stated that the authors had not received any compensation. He did not say whether any of the authors had been reinstated in their posts.

Consultations with State party: On 23 October 2003, in a meeting with the Permanent Representative of the DRC in Geneva, the Special Rapporteur reminded the Representative that the Committee had never received any follow-up response from the State party on any of the cases in which it had found violations: Mbenge et al v. DRC, Case no. 16/1977, Views adopted on 25 March 1983; Luyeye v. Zaire, Case no. 90/1981, Views adopted on 21 July 1983; Muteba v. Zaire, Case no. 124/1982, Views adopted on 24 July 1984; Mpandanjila et al v. Zaire, Case no. 138/1983, Views adopted on 26 March 1986; Mpaka Nsusu v. Zaire, Case no. 157/1983, Views adopted on 26 March 1986; Miango v. Zaire, Case no. 194/1985, Views adopted on 27 October 1987; Birindwa and Tshisekedi v. Zaire, Case nos. 241/1987 and 242/1987, Views adopted on 2 November 1989; Kanana v. Zaire, Case no. 366/1989, Views adopted on 2 November 1993; Tshishimbi v. DRC, Case no. 542/1993, Views adopted on 25 March 1996; Gedumbe v. DRC, Case no. 641/1995, Views adopted on 9 July 2002. The Permanent Representative assured the Special Rapporteur that he would relay his concerns to the State party and remind it of its obligations under the Optional Protocol. In this regard, he requested the Secretariat to forward to the Mission a copy of the minutes of the consultation with a reminder of the names of the cases in which the Committee have requested follow-up information. The Secretariat forwarded this information on 20 November 2003. To date no further information has been received from the State party.

Special Rapporteur's recommendations: Further information and clarification should be requested from the authors. The State party should be sent a reminder for information on all the above cases, including Adrien Mundy Busyo, Thomas Ostudi Wongodi, René Sibum Matubuka et al. v. Democratic Republic of the Congo.

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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Democratic
Republic of the
Congo:

Views in 13 cases with findings of violations:

16/1977 - *Mbenge et al.*; see A/57/40, paragraph 239;

90/1981 - *Luyeye*;

124/1982 - *Muteba*;

138/1983 - *Mpandanjila et al.*;

157/1983 - *Mpaka Nsusu* and 194/1985 - *Miango* (*Selected Decisions*, vol. 2);

241/1987 and 242/1987 - *Birindwa and Tshisekedi* (A/45/40);

366/1989 - *Kanana* (A/49/40);

542/1993 - *Tshishimbi* (A/51/40);

641/1995 - *Gedumbe* (A/57/40); no follow-up reply received;

933/2000 - *Adrien Mundy Busyo, Thomas Ostudi Wongodi, René Sibum Matubuka et al.* (A/58/40); see paragraph 240 below for author's reply;

962/2001 - *Marcel Mulezi* (annex IX); follow-up not yet due.

No follow-up reply has been received in respect of any of the above cases, in spite of repeated reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of the State party,

with a view to discussing follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of the State party to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent Mission, who agreed to transmit the Special Rapporteur's concerns to the capital and provide a written response. No replies have been received. Despite follow-up consultations having been held again during the seventy-ninth session, replies are still pending. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that further reminders should be sent to the State party.

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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.

...

243. Democratic Republic of the Congo: as to case No. 933/2000 - *Adrien Mundy Busyo, Thomas Ostudi Wongodi, René Sibum Matubuka et al.* (A/58/40), by letter of 10 October 2003, the State party informed the Committee that the Government had charged the Minister for Justice with the implementation of the resolution of the Inter-Congolese Dialogue concerning the case of the 315 dismissed civil and military judges. By e-mail of 9 December 2003, one of the authors informed the Committee that the presidential decree that was the subject of the Committee's Views and on the basis of which the authors had lost their jobs had been annulled on 25 November 2003. However, he also stated that the authors had not received any compensation. He did not say whether any of the authors had been reinstated in their posts.

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
...						
Democratic Republic of the Congo (13)*	*Note: See A/59/40 for details of follow-up consultations.					
	16/1977, <i>Mbenge</i>				X	X
	Selected Decisions, vol. 2					
	90/1981, <i>Luyeye</i>				X	X
	Nineteenth session					
	Selected Decisions, vol. 2					
	124/1982, <i>Muteba</i>				X	X
	Twenty-second session					
	Selected Decisions, vol. 2					
	138/1983, <i>Mpandanjila et al.</i>				X	X
	Twenty-seventh session					
	Selected Decisions, vol. 2					
	157/1983, <i>Mpaka Nsusu</i>				X	X
Twenty-seventh session						
Selected Decisions, vol. 2						
194/1985, <i>Miango</i>				X	X	
Thirty-first session						
Selected Decisions, vol. 2						
241/1987, <i>Birindwa</i>				X	X	
A/45/40						
242/1987, <i>Tshisekedi</i>				X	X	
A/45/40						
366/1989, <i>Kanana</i>				X	X	
A/49/40						
542/1993, <i>Tshishimbi</i>				X	X	
A/51/40						
641/1995, <i>Gedumbe</i>				X	X	
A/57/40						
933/2000, <i>Adrien Mundy</i>				X	X	

	<i>Bisyo et al.</i> (68 magistrates) A/58/40					
	962/2001, <i>Marcel Mulezi</i> 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, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

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

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

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

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25. Mr. ANDO said that he would take Mr. Wieruszewski's comment into account. On the communications relating to the Democratic Republic of the Congo, he said that since the State party was still at the stage of following up the Committee's concluding observations (CCPR/C/COD/CO/3), the Committee should wait for the Government's comments on the communications before it took any further action.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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

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

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Democratic Republic of the Congo (14)*	<i>*Note: See A/59/40 for details of follow-up consultations.</i>					
	16/1977, <i>Mbenge</i> Eighteenth session Selected Decisions, vol. 2				X A/61/40	X
	90/1981, <i>Luyeye</i> Nineteenth session Selected Decisions, vol. 2				X A/61/40	X
	124/1982, <i>Muteba</i> Twenty-second session Selected Decisions, vol. 2				X A/61/40	X
	138/1983, <i>Mpandanjila et al.</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	157/1983, <i>Mpaka Nsusu</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	194/1985, <i>Miango</i>				X	X

Thirty-first session Selected Decisions, vol. 2				A/61/40	
241/1987, <i>Birindwa</i> A/45/40				X A/61/40	X
242/1987, <i>Tshisekedi</i> A/45/40				X A/61/40	X
366/1989, <i>Kanana</i> A/49/40				X A/61/40	X
542/1993, <i>Tshishimbi</i> A/51/40				X A/61/40	X
641/1995, <i>Gedumbe</i> A/57/40				X A/61/40	X
933/2000, <i>Adrien Mundy</i> <i>Bisyo et al.</i> (68 magistrates) A/58/40				X A/61/40	X
962/2001, <i>Marcel Mulezi</i> A/59/40				X A/61/40	X
1177/2003, <i>Wenga and</i> <i>Shandwe</i> A/61/40				X	X
...					

...

Annex VII

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

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

...

<i>State party</i>	DEMOCRATIC REPUBLIC OF THE CONGO - GENERAL INFORMATION ON ALL VIEWS
<i>Cases</i>	Mbenge (16/1977), Mpandanjila et al. (38/1983), Luyeye (90/1981), Mutebal (124/1982), Mpaka Nsusul (157/1983), Miango (94/1985), Birindwa (241/1987), Tshisekedi (242/1987), Kanana (366/1989), Tshishimbi (542/1993), Gedumbe (641/1995), Adrien Mundy Bisyo et al. (933/2000), Marcel Mulezi (962/2001).
<i>State party's response</i>	The State party has not responded to any of the Views of the Committee to date.
<i>Committee's Decision</i>	<p>During its eighty-sixth session in March-April 2006, the Committee considered the State party's third periodic report. In its Concluding Observations it considered that, "While welcoming the delegation's assertion that the judges who wrote communication No. 933/2000 (<i>Busyo et al.</i>) can once again practice their profession freely and have been compensated for being arbitrarily suspended, the Committee remains concerned that the State party failed to follow up on its recommendations contained in many Views adopted under the Optional Protocol to the Covenant (such as the Views in case Nos. 366/1989 (<i>Kanana</i>), 542/1993 (<i>N'Goya</i>), 641/1995 (<i>Gedumbe</i>) and 962/2001 (<i>Mulezi</i>).</p> <p>The State party should follow up on the Committee's recommendations in the above-mentioned cases and submit a report thereon to the Committee as soon as possible. The State party should also accept a mission by the Committee's special rapporteur to follow up to the Views and discuss possible ways and means of implementing the</p>

Committee's recommendations, with a view to ensuring more effective cooperation with the Committee.”

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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

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

<i>State party and number of cases with violation</i> ...	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
Democratic Republic of the Congo (14)*	<i>* Note: See A/59/40 for details of follow-up consultations.</i>					
	16/1977, <i>Mbenge</i> Eighteenth session Selected Decisions, vol. 2				X A/61/40	X
	90/1981, <i>Luyeye</i> Nineteenth session Selected Decisions, vol. 2				X A/61/40	X
	124/1982, <i>Muteba</i> Twenty-second session Selected Decisions, vol. 2				X A/61/40	X
	138/1983, <i>Mpandanjila et al.</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	157/1983, <i>Mpaka Nsusu</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	194/1985, <i>Miango</i> Thirty-first session Selected Decisions, vol. 2				X A/61/40	X
	241/1987, <i>Birindwa</i> A/45/40				X A/61/40	X
	242/1987, <i>Tshisekedi</i>				X	X

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	A/45/40				A/61/40	
	366/1989, <i>Kanana</i> A/49/40				X A/61/40	X
	542/1993, <i>Tshishimbi</i> A/51/40				X A/61/40	X
	641/1995, <i>Gedumbe</i> A/57/40				X A/61/40	X
	933/2000, <i>Adrien Mundy Bisyo et al.</i> (68 magistrates) A/58/40				X A/61/40	X
	962/2001, <i>Marcel Mulezi</i> A/59/40				X A/61/40	X
	1177/2003, <i>Wenga and Shandwe</i> A/61/40				X	
...						

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.

...						
Democratic Republic of the Congo (14)*	*Note. See A/59/40 for details of follow-up consultations.					
	16/1977, <i>Mbenge</i> Eighteenth session Selected Decisions, vol. 2					
	90/1981, <i>Luyeye</i> Nineteenth session Selected Decisions, vol. 2				X A/61/40	X
	124/1982, <i>Muteba</i> Twenty-second session Selected Decisions, vol. 2				X A/61/40	X
	138/1983, <i>Mpandanjila et al.</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	157/1983, <i>Mpaka Nsusu</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	194/1985, <i>Miango</i> Thirty-first session Selected Decisions, vol. 2				X A/61/40	X
	241/1987, <i>Birindwa</i> A/45/40				X A/61/40	X
	242/1987, <i>Tshisekedi</i>				X	X

	A/45/40				A/61/40	
Democratic Republic of the Congo (<i>cont'd</i>)	366/1989, <i>Kanana</i> A/49/40				X A/61/40	X
	542/1993, <i>Tshishimbi</i> A/51/40				X A/61/40	X
	641/1995, <i>Gedumbe</i> A/57/40				X A/61/40	X
	933/2000, <i>Adrien Mundy Bisyo et al.</i> (68 judges) A/58/40				X A/61/40	X
	962/2001, <i>Marcel Mulezi</i> A/59/40				X A/61/40	X
	1177/2003, <i>Wenga and Shandwe</i> A/61/40				X	
...						

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.

...						
Democratic Republic of the Congo (14)*	*Note: See A/59/40 for details of follow-up consultations.					
	16/1977, <i>Mbenge</i> Eighteenth session Selected Decisions, vol. 2					
	90/1981, <i>Luyeye</i> Nineteenth session Selected Decisions, vol. 2				X A/61/40	X
	124/1982, <i>Muteba</i> Twenty-second session Selected Decisions, vol. 2				X A/61/40	X
	138/1983, <i>Mpandanjila et al.</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	157/1983, <i>Mpaka Nsusu</i> Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	194/1985, <i>Miango</i> Thirty-first session Selected Decisions, vol. 2				X A/61/40	X

	241/1987, <i>Birindwa</i> A/45/40				X A/61/40	X
	242/1987, <i>Tshisekedi</i> A/45/40				X A/61/40	X
	366/1989, <i>Kanana</i> A/49/40				X A/61/40	X
	542/1993, <i>Tshishimbi</i> A/51/40				X A/61/40	X
Democratic Republic of the Congo (<i>cont'd</i>)	641/1995, <i>Gedumbe</i> A/57/40				X A/61/40	X
	933/2000, <i>Adrien Mundyo Bisyo et al.</i> (68 judges) A/58/40				X A/61/40	X
	962/2001, <i>Marcel Mulezi</i> A/59/40				X A/61/40	X
	1177/2003, <i>Wenga and Shandwe</i> A/61/40				X	
...						

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

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

...

<i>State party</i>	<i>Democratic Republic of the Congo</i>
<i>Case</i>	<i>Mundy Bisyo et al., 933/2000</i>
<i>Views adopted on</i>	21 July 2003
<i>Issues and violations found</i>	Dismissal of 68 judges, right to liberty, independence of the judiciary - article 25 (c), article 14, paragraph 1, article 9 and article 2, paragraph 1.
<i>Remedy recommended</i>	An appropriate remedy, which should include, inter alia: (a) in the absence of a properly established disciplinary procedure against the authors, reinstatement in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; and (b) compensation calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement. The State party is also under an obligation to ensure that similar violations do not occur in future and, in particular, that a dismissal measure can be taken only in accordance with the provisions of the Covenant.
<i>Due date for State party response</i>	1 November 2003
<i>Date of State party response</i>	The State party has not responded to any of the Views of the Committee to date.
<i>State party response</i>	None

Author's comments

On 23 June 2009, Mr. Ntenda Didi Mutuala, one of the authors of the communication (there were 68 judges), submitted that the original decree No. 144 of 6 November 1998, which had related to the authors' dismissal, was denounced by a subsequent decree (following the Committee's decision), No. 03/37 of 23 November 2003. On the basis of this decree, the Minister of Justice took his decision of 12 February 2004, to reassign three judges, including the author of the letter, to their functions. The names of the other two judges are not provided by the author. The author submits however that he was reassigned to the same functions and grade, which he had been carrying out in 1998 at the time of the original decree, and which he had assumed in 1992. Thus, the author had around 12 years in total at the same grade by the time he was reassigned to his position by the Minister's decision of 12 February 2004. According to the author, a promotion is normally foreseen after three years on each grade, assuming his/her functions are carried out well. The author believes that he has so carried out his functions. In addition, he submits that despite the fact that he has requested compensation pursuant to the Committee's decision none has been forthcoming.

Committee's Decision

The dialogue is ongoing.

...