



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
New York, 16 March– 3 April

**Follow-up Progress Report of the Human Rights Committee on
Individual Communications**

This report compiles information received since the 94th session of the Human Rights Committee, from 13 to 31 of October 2008.

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| State party | GERMANY |
| Case | M.G., 1482/2006 |
| Views adopted on | 23 July 2008 |
| Issues and violations found | Interference to privacy honour and reputation disproportionate and thus arbitrary - article 17, in conjunction with article 14, paragraph 1 |
| Remedy recommended | An effective remedy including compensation. |
| Due date for State party response | 27 February 2009 |
| Date of reply | 13 February 2009 |
| State party response | The State party submits that the legal proceedings giving rise to the communication are still pending before the Ellwangen Regional Court (Landgericht). The course of the proceedings up to May 2008 was summarized in the Views (8.1 to 8.12). The President of the Ellwangen Regional Court has informed the Ministry of Justice that the 3d Chamber of the Court plans to schedule an oral hearing for March 2009, to which both parties will be summoned to attend in person. No experts will be invited |

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| | <p>to attend the hearing. The Chamber intends to give both parties the opportunity to state their views regarding the Views of the Human Rights Committee. The hearing is meant to provide the author with an opportunity to state her case regarding the matters raised in the communication, and to remedy the lack of a personal hearing before the order of November 2005.</p> <p>The State party mentions that the composition of the Chamber has completely changed since November 2005. In the State party's view, these measures provide adequate reparation as set out in the Committee's General Comment Nr. 31 (para 16).</p> <p>On the issue of compensation, to date the author has not filed any claims for compensation with the Federal Government. There has been a note requesting the payment of a clearly exaggerated sum for unsubstantiated costs from a Mr. Jürgen Hass who claims to have acted on behalf of the author. Mr. Hass has not produced any power of attorney. Mr. Hass has an extensive criminal record in Germany and is currently residing in Paraguay. He has been sentenced in Germany for a variety of offences, including fraud and fraudulent use of professional titles. There are no indications that he has in any way materially contributed to the case in question. His note has therefore been disregarded.</p> <p>According to the State party, as the views of the Committee refer only to the question of issuing an order for medical examination by the court without previously hearing the author in person, they have no bearing on the distribution of costs in the legal proceedings giving rise to the communication, which will depend on the eventual outcome of these proceedings.</p> <p>The State party submits that the Views of the Committee have been translated into German. The Federal Ministry of Justice has sent the translated Views together with a legal analysis – to the effect that the Views require the courts generally to issue orders for an examination of someone's capacity to take part in the proceedings only after an oral hearing - to the Ministries of Justice of the Länder, requesting them to inform the courts.</p> <p>The Länder have informed the Federal Ministry of Justice that the Views have been made known to all the Higher Regional Courts, who in turn will distribute them to the lower courts. The Federal Courts of Justice have been informed likewise. In addition, the Views of the Committee have been published in German on the Website of the Federal Ministry of Justice.</p> |
| Author's comments | Awaiting author's comments |

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| Further action taken/required | The State party's submission was sent to the author on 13 February 2009 for comments within two months that is by 13 April 2009. |
| Proposed Committee's Decision | The Committee may wish to wait for a response from the author before making a decision on the State party's follow-up submission. |

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| State party | GREECE |
| Case | KOLOMIOTIS, 1486/2006 |
| Views adopted on | 24 July 2008 |
| Issues and violations found | Torture, or cruel, inhuman or degrading treatment and punishment, obligation to investigate complaints maltreatment, effective remedy – Article 2, paragraph 3, read together with article 7 of the Covenant. |
| Remedy recommended | Effective remedy and appropriate reparation |
| Due date for State party response | 30 January 2009 |
| Date of State party's response | 19 January 2009 |
| State party's response | <p>The State party submits that the author may institute an action for compensation under article 105 of the Introductory Law to the Civil Code for damages suffered due to his ill-treatment. According to article 105, "The State shall be liable for compensation for illegal acts or omissions of organs of the State in the exercise of the public power entrusted to them, unless such acts or omissions violated a provision of general interest....."</p> <p>The State party submits that its courts often award large amounts of compensation for such violations. In addition, the effectiveness and appropriateness of this type of remedy has been confirmed in the context of judgements of the European Court of Human Rights, in respect of which the State party's Court of Cassation considered that the victim/s in question could institute a claim under articles 104 and 105 of this law for compensation pursuant to a finding in their favour by the ECHR. According to the State party, in this regard the decisions of the Human Rights Committee are analogous to that of the ECHR, and the only question to be</p> |

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| | <p>considered by the courts with respect to such a claim would be the amount of compensation to be paid.</p> <p>The State party submits that the Views will be published on the website of the Legal State Council and transmitted to the President, the Public Prosecutor of the Court of Cassation, and the Hellenic Police.</p> |
| Author's comments | Awaiting comments |
| Further action taken/required | The State party's comments were sent to the author on 21 January 2009 for comments within a deadline of two months that is 21 March 2009. |
| Proposed Committee's Decision | The follow-up dialogue is ongoing. |

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| State party | JAMAICA |
| Case | SIMPSON, 695/1996 |
| Views adopted on | 23 October 2001 |
| Issues and violations found | Inhuman conditions of detention and absence of legal representation – article 10, paragraph 1, 14, paragraph 3 (d). |
| Remedy recommended | An appropriate remedy, including adequate compensation, an improvement in the present conditions of detention and due consideration of early release. |
| Due date for State party response | 5 February 2002 |
| Date of reply | 18 June 2003 |
| State party response | On 18 June 2003, State party had advised that the author had received medical attention and that his detention conditions had improved. The Courts would need to decide on his parole eligibility - the Registrar of the Court of Appeal is making arrangements for the matter to be placed before a judge of the court. The assignment of legal representation is being awaited. |
| Author's comments | On 18 February 2002, counsel had asked whether the State party had responded with follow-up information. He noted that the author's non-parole period had still not been reviewed as required by law since the commutation of his death sentence in 1998, |

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| | <p>rendering him ineligible for parole. The State party has also not taken steps to address the author's medical problems.</p> <p>On 26 March 2008, the author informed the Committee that his conditions of detention had worsened and that he had not been considered for release.</p> <p>On 1 September 2008, the author informed the Committee that his lawyer had lodged an application for parole on the basis of the Mc Cordie Morrison judgement delivered on 2 March 2004, which decided that an automatic right to apply for parole arises where a case has not been reviewed by a judge of the Court of Appeal within seven years from the imposition of a life sentence commuted from a death sentence. As the author's death sentence was commuted on 22 December 1997, he should have been eligible for parole in December 2005 but was not informed by his lawyer until 2006. An application was made on his behalf on 18 October 2006.</p> |
| Further action taken/required | The author's letter was sent to the State party for comments within two months, 27 March 2009. |
| Proposed Committee's Decision | The Committee considers the dialogue ongoing. |

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| State party | PERU |
| Case | GUTIERREZ VIVANCO, 678/1996 |
| Views adopted on | 26 March 2002 |
| Issues and violations found | Undue delay, no impartiality or independence, faceless judges - Articles 14 (1) and (3) (c). |
| Remedy recommended | The State party has the obligation to provide an effective remedy, including compensation, to Mr. José Luis Gutiérrez Vivanco. In addition, the State party has the obligation to ensure that similar violations do not occur in the future |
| Due date for State party's reply | 25 September 2002 |
| Date of State party's response | 15 January 2009 |

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| State party's response | The State party informs the Committee that the author has not filed a lawsuit against the State party claiming damages. By resolution dated 24 December 1998, he was pardoned, and thus all warrants of arrest against him have been cancelled and all criminal records arising from this process have been deleted. |
| Author's comments | Awaiting reply |
| Further action taken/required | The State party's submission was sent to the author for comments within two months, 27 March 2009. |
| Proposed Committee's Decision | The follow-up dialogue remains ongoing. |

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| Case | GOMEZ CASAFRANCA, 981/2001 |
| Views adopted on | 22 July 2003 |
| Issues and violations found | Torture, liberty and security of person, - Articles 7; 9, paragraphs 1 and 3; 14 and 15 |
| Remedy recommended | The State party is under an obligation to release Mr. Gómez Casafranca and pay him appropriate compensation. |
| Due date for State party's reply | 19 November 2003 |
| Date of State party's response | 15 January 2009 |
| State party's response | The State party informs the Committee that the trial against the author and others for crimes against public order is currently pending at the Penal Chamber of the Supreme Court. |
| Author's comments | Awaiting comments. |
| Further action taken/required | The State party's submission was sent to the author for comments within two months, 27 March 2009. |
| Proposed Committee's Decision | The follow-up dialogue remains ongoing. |

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| Case | CELIS LAUREANO, 540/1993 |
| Views adopted on | 25 March 1996 |
| Issues and violations found | Disappearance, protection of a minor, torture, right to life - Articles 6, paragraph 1; 7; and 9, paragraph 1, 2, paragraph 1; 24, paragraph 1, |
| Remedy recommended | The State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary. |
| Due date for State party's reply | 30 July 1996 |
| Date of State party's response | 15 January 2009 |
| State party's response | The State party informed the Committee that despite the investigations having been carried out to date the whereabouts of Ana Celis Laureano are unknown. In view of the fact that her participation in the terrorist organization "Shining Path" (Sendero Luminoso) has been proven, she could be in hiding. |
| Author's comments | Awaiting comments |
| Further action taken/required | The State party's submission was sent to the author for comments with a request for comments within two months, 27 March 2009. |
| Proposed Committee's Decision | The follow-up dialogue with the State party continues. |

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| State party | THE REPUBLIC OF KOREA |
| Case | YEO-BUM YOON, 1321/2004; MYUNG-JIN CHOI, 1322/2004; HAK-CHEOL SHIN, 926/2000; KEUN-TAE KIM, 574/1999; JONG-KYU DOHN, 518/1992; JEONG-EUN LEE, 1119/2002; KANG, 878/1999; and PARK, 628/1995. |
| Views adopted on | <u>1321/2004 and 1322/2004</u> – 3 November 2006 <u>926/2000</u> - 16 March 2004 |

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| | <p><u>574/1999</u> – 3 November 1998</p> <p><u>518/1992</u> – 19 July 1995</p> <p><u>1119/2002</u> – 20 July 2005</p> <p><u>878/1999</u> – 15 July 2003</p> <p><u>628/1995</u> – 20 October 1998</p> |
| <p>Issues and violations found</p> | <p>Conscientious objection – article 18, paragraphs 1 and 3 (1321 and 1322/2004); Freedom of expression – article 19, paragraph 2 (926/2000, 574/1999 and 518/1992); Freedom of expression, thought conscience and religion – 19, paragraph 2 and 18 (1119/2002); Freedom of expression and belief, solitary confinement, discrimination - article 10, paragraphs 1 and 3, and articles 18, paragraph 1, and 19, paragraph 1, in conjunction with 26, of the Covenant (878/1999); Freedom of expression - article 19 (628/1995).</p> |
| <p>Remedy recommended</p> | <p><u>1321/2004 and 1322/2004</u> - An effective remedy, including compensation.</p> <p><u>926/2000</u> – An effective remedy, including compensation for his conviction, annulment of his conviction, and legal costs.....it should return the painting to him in its original condition, bearing any necessary expenses incurred thereby.</p> <p><u>574/1999</u> - An effective remedy.</p> <p><u>518/1992</u> - An effective remedy, including appropriate compensation, for having been convicted for exercising his right to freedom of expression.....invites the State party to review article 13(2) of the Labour Dispute Adjustment Act.</p> <p><u>1119/2002</u> – An effective remedy, including appropriate compensation. The Committee recommends that the State party amend article 7 of the National Security Law, with a view to making it compatible with the Covenant.</p> <p><u>878/1999</u> – An effective remedy.....although the author has been released, the State party is under an obligation to provide the author with compensation commensurate with the gravity of the breaches in question. .</p> <p><u>628/1995</u> - An effective remedy, including appropriate compensation for having been convicted for exercising his right to</p> |

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| | freedom of expression. |
| Date of State party's response | <p>The State party provided responses to each of these cases previously in Annual Report A/62/40, A/59/40, A/63/40.</p> <p>On 9 September 2008, the authors in case nos. <u>1321/2004</u> and <u>1322/2004</u> reiterated that their cases had not been implemented.</p> |
| State party's response | <p>Following a request for a meeting by the Rapporteur on Follow-up to Views, the State party provided follow-up information on the cases under review in particular relating to specific questions posed by the Rapporteur in an "Aide Memoire" sent to the State party.</p> <p><u>Re. case nos. 1321/2004 and 1322/2004 on conscientious objection</u>, the State party informed the Committee that the "Alternative Service System Research Committee" (See A/63/40), which was set up to review the issues involving conscientious objection to military service and an alternative service system had met on eight occasions but had not completed its work. In addition, the Ministry of National Defence was undertaking the process of collecting public opinion on the possibility of introducing an alternative service system.</p> <p><u>Re. case nos. 926/2000 and 574/1999</u>, the State party reiterated that in the latter case the author had been rehabilitated and had recovered his citizenship and that in relation to the former case the Views had been published – it did not respond to the question raised by the Rapporteur on the process of abolition or amendment of the National Security Law which the State party had referred to in its correspondence of 2004 and 2006.</p> <p><u>Re. case no. 628/1995</u>, the State party submitted that the author had been rehabilitated and the Views published. The Views were also published in case no. <u>878/1999</u>. No further information was provided in these cases.</p> <p><u>Re. case no. 1119/2002</u>, the State party maintains its reservation to article 22 and submits that as the National Assembly has not reached any conclusions regarding the amendment or abolition of the National Security Act, the government is continuing its efforts to minimise the possibility of arbitrary interpretation and abuse in the application of Act in question. On 30 July 2003, the State party abolished the law-abidance oath system.</p> <p>As to the implementation of individual communications generally, the State party submits that the final decisions of domestic courts cannot be invalidated by the Committee's Views and that the task</p> |

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| | of developing specific remedies in the context of the domestic judicial system remains challenging unless additional legislative resources by the National Assembly are in place. The government intends to carry out a comparative analysis on the merits of the means used by other countries to implement the Views. |
| Author's comments | See Annual Report A/62/40, A/59/40, A/63/40 |
| Further action taken/required | The State party should be requested to provide updates on the possible amendments to the National Security Act, the issue of conscience objection, and the comparative analysis which the State party is undertaking, in due course. |
| Proposed Committee's Decision | The follow-up dialogue is ongoing in all of these cases. |

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| State party | THE RUSSIAN FEDERATION |
| Case | KONSTANTIN BABKIN, 1310/2004 |
| Views adopted on | 3 April 2008 |
| Issues and violations found | Trial and punishment for the same offence twice and unfair trial - article 14, paragraph 1 read in conjunction with article 14, paragraph 7. |
| Remedy recommended | Compensation and a retrial in relation to the author's murder charges |
| Due date for State party response | 3 April 2008 |
| Date of reply | 29 January 2009 |
| State party response | The State party submits that the Committee's Views were forwarded by the Supreme Court to the Supreme Court's of the republics to ensure that this type of violation will not occur again. The Views were widely published and the author as lodged another "petition" in the Supreme Court. The State party does not clarify what type of petition was lodged. |
| Author's comments | Awaiting comments |
| Further action taken/required | On 30 January 2009, the State party's submission was transmitted to the author for comments within two months that is by 30 March |

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| | 2009. |
| Proposed Committee's Decision | The follow-up dialogue remains ongoing. |

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| State party | SPAIN |
| Case | HILL, BRIAN, 526/1993 |
| Views adopted on | 2 April 1997 |
| Issues and violations found | The author's were not given any food during the first five days of police detention; they were not granted release on bail; their right to defend themselves was not respected; their right to have their conviction and sentence reviewed was denied to them - Articles 9, paragraph 3; 10; 14, paragraphs 3(c) and 5. |
| Remedy recommended | An effective remedy, entailing compensation. |
| Due date for State party response | August 2007 |
| Date of State party's response | 16 November 2004, 2 November 2005, and 9 October 1997 |
| State party's response | The Committee will recall that on 9 October 1997, the State party had provided information on the possibility of seeking compensation. On 16 November 2004, it informed the Committee about the measures being pursued by the author to seek redress and in particular to the fact that some applications were pending. On 2 November 2005, the State party submitted that Mr. Hill was re-tried by the Supreme Court, which upheld his conviction. Although there was an amparo still pending before the Constitutional Court, it submitted that his extradition could take place at any time. |
| Author's comments | On 3 November 2008, the author informed the Committee that after 10 years of having pursued all domestic procedures available to him in the State party all have proven fruitless. He gives a detailed account of the procedures pursued in connection with two separate actions – an administrative claim for compensation against the Spanish Ministry of Justice and a Judicial appeal before the Provincial Court of Valencia to annul the legal process which had led to his sentence and conviction. He requests the Committee, <i>inter alia</i> , to pursue the follow-up of this case with |

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| | the State party. |
| Further action taken/required | <p>The Committee will be aware that during the examination of the State party's fifth report to the Committee in October 2008, the Committee requested the State party to provide information on all the cases of findings of violations against it.</p> <p>The author's submission was sent to the State party for comments by 21 March 2009.</p> |
| Proposed Committee's Decision | The follow-up dialogue remains ongoing. |

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| State party | SRI LANKA |
| Case | NALLARATNAM SINGARASA, 1033/2001 |
| Views adopted on | 21 July 2004 |
| Issues and violations found | Burden of proof with respect to the extraction of a statement under duress, unfair trial, undue delay - Article 14, paragraphs 1, 2, and 3 (c), and article 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant |
| Remedy recommended | An effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant. |
| Due date for State party response | 8 November 2004 |
| Date of State party's response | 2 February 2005 |
| State party's response | <p>The Committee will recall that on 2 February 2005, the State party had submitted, inter alia (See A/60/40) that the Constitution of Sri Lanka and the prevailing legal regime did not provide for release, retrial or the payment of compensation to a convicted person, after his/her conviction had been affirmed by the highest appellate court, the Supreme Court. To take such steps would be contrary to the Constitution and be tantamount to an interference of the independence of the judiciary.</p> <p>Although not specifically provided by the State party, the</p> |

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| | <p>Committee is reminded of the Sri Lankan Supreme Court decision of 15 September 2006 in this case, relating to a request to have the author retried while referring to the Committee's Views. In this decision, the Supreme Court decided that the accession of the Sri Lankan Government to the Optional Protocol to the Covenant is inconsistent with the Constitution, as the treaty had not been implemented by legislation. The Court concluded that in the absence of such domestic implementing legislation, the accession to the Optional Protocol by the President in 1997 had no legal effect in Sri Lanka.</p> |
| <p>Author's comments</p> | <p>On 30 June 2008, the author responded to a request on the significance if any on his case of the Supreme Court judgement of 17 March 2008 (SC Ref No. 01/2008). The author responded that this judgement had no practical significance for his case for three reasons. Firstly, the SC decision in his own Application for Revision, of 15 September 2006, is a binding and non-reviewable decision, in which it rejects the possibility of giving effect to the Committee's Decision and makes it clear that neither the Covenant nor the Views have any effect in Sri Lanka. Consequently, a subsequent decision cannot and does not have any effect on that judgement. Secondly, the SC decision of 17 March 2008 is premised on a finding that Covenant rights are protected in the Sri Lankan legal order through existing laws and the Constitution. It does not anticipate a new basis or right of challenge. The author explains that some ICCPR rights – including some of the fair trial guarantees applicable in his case – are not effectively protected in the Constitution or statute and provides details of such rights. Thirdly, the judgement will have no effect in practice on the restrictions of his rights through the PTA, as that law's provisions are not subject to review. Despite, the author's view that the judgement in question will have no effect on his case, he expresses the view that it could prove important in principle in affirming that all ICCPR rights are directly applicable and justiciable under domestic law, which should be interpreted as including those rights in respect of which Sri Lanka has been found in breach in the author's case. It should, in principle, require that the Supreme Court revisit the decision in this case. However, the author is doubtful as to whether this judgement will have any real impact in practice.</p> |
| <p>Further action taken/required</p> | <p>During a consultation in March 2008, in New York, between State party representatives and the Special Rapporteur on Follow-up to Concluding Observations, the representatives provided the Rapporteur with a copy of another judgement of the Supreme Court (SC Ref No. 01/2008) in response to some of the issues raised. According to this judgement the Constitution, ICCPR Act</p> |

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| | <p>and other domestic laws give adequate recognition to the civil and political rights contained in the ICCPR and rights recognised in the ICCPR are justiciable through the medium of the legal and constitutional processes prevailing in the State party. This judgement was sent to the author with a request for comments on how if at all it would affect his case in particular with respect to the Supreme Court judgement in his own case.</p> <p>The author's submission was sent to the State party for comments by 1 April 2009.</p> |
| Proposed Committee's Decision | The Committee considers the dialogue ongoing. |

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| State party | ZAMBIA |
| Case | Chisanga, 1132/2002 |
| Views adopted on | 18 October 2005 |
| Issues and violations found | Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5 together with articles 2, 7, 6, paragraph 2, and 6, paragraph 4, together with article 2. |
| Remedy recommended | To provide the author with a remedy, including as a necessary prerequisite in the particular circumstances, the commutation of the author's death sentence. |
| Due date for State party response | 9 February 2006 |
| Date of State party's response | 27 May 2008 (previously responded on 17 January 2006) |
| State party's response | <p>The Committee will recall that on 17 January 2006, the State party had provided its follow-up response, in which it argued extensively on the admissibility of the communication (see annual report A/61/40).</p> <p>It also submitted that the President had declared publicly that he would not sign any death warrants during his term in office. No death sentence has been carried out since 1995, and there is a moratorium on the death penalty in Zambia.</p> |

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| Author's comments | On 12 November 2008, the author's wife informed the Committee that in August her husband's death sentence had been commuted to life imprisonment. Both his wife and the author himself have been petitioning the office of the President from 2001 to 2007 requesting a pardon and ask the Committee for its assistance in this regard. |
| Further action taken/required | The author's letter was sent to the State party for comments with a deadline of two months that is 21 March 2009. |
| Proposed Committee's Decision | <p>The Committee will recall that it had decided (annual report A/61/40), that the State party's arguments on admissibility should have been included in its comments on the communication prior to consideration by the Committee, that it regarded the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.</p> <p>The Committee may wish to consider whether the commutation of the author's death sentence is a satisfactory remedy.</p> |

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
