

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE 93<sup>RD</sup> SESSION REPORT OF THE RAPPOREUR ON INDIVIDUAL COMMUNICATIONS 23 JULY 2008

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### Introduction

The Committee's rapporteur on individual communications, Mr Shearer, presented his report to the Committee on Wednesday 23 July 2008.<sup>1</sup> The report detailed individual communications from ten countries.<sup>2</sup> The details of the cases were not explained during the presentation as all individual communications had previously been discussed in closed session. The following information highlights the status of each communication and provides recommendations for further action by the Committee.

Following the initial presentation by Mr Shearer there were requests for the floor by Committee members who wished to add comments or ask questions. These related to individual communications from Canada, Iceland and Jamaica.

### Australia

The first cases to be discussed were two communications received against Australia. Mr Shearer stated that the first communication brought before the Committee had questioned whether the Court of Appeal in Australia is obliged to provide reasons for decisions it has reached. He noted the Government's response stipulated that amendments had been made to how complaints were conducted. Most applications before it are considered based on documents provided, in the absence of the complainant. It was unclear what these amendments included, but Mr Shearer noted that they appeared to reduce the likelihood of investigation into a complaint heard in abstention. Furthermore, he said that the response stated that few oral hearings occur;

<sup>1</sup> CCPR/C/93/R5

<sup>2</sup> Australia, Canada, Belarus, Iceland, Jamaica, Serbia, Sri Lanka, Tajikistan, Zambia, Sweden.

however when this is the case Counsel is assigned to the matter. Mr Shearer said that the State response had been forwarded to the complainant and the deadline for response had not yet passed. He recommended that this matter be considered ongoing.

The second case pertained to Australia's complex detention laws and immigration laws. The Committee had called upon the State to provide compensation to the authors of the communication.<sup>3</sup> Mr Shearer said that he had received a detailed response from the State stipulating that since this case changes have been made to legislation governing immigration and detention laws and such a situation is unlikely to arise again. The State also responded that, in so far as a violation of Article 9(4) of the Convention<sup>4</sup> had been alleged, they found no such violation. This, it was said, is due to the nature of Australia's domestic system where 'lawfulness' refers to the domestic legal system and not international law. Therefore, the State felt no violation had been made under international law and no compensation was to be made to the authors of the communication. Mr Shearer stated that this is not the first time that Australia had provided this interpretation of the Covenant and as the deadline had not yet passed for a response from the complainants, the matter should be considered ongoing.

### **Canada**

The communication submitted against Canada appeared to be longstanding before the Committee. Mr Shearer provided details that it concerned the custody of a child, with allegations against the mother that she was not competent to raise the child. This appeared to be an extremely complicated case with a long history that also involves the Committee on the Rights of the Child (CRC)<sup>5</sup>.

Mr Shearer said that the State was 'upset' that the decision the Committee had reached had not been based on all the material the State held on the case. According to Mr Shearer, the State had been 'confused' as to the requirements for responding to a communication that had been submitted to the Committee, merely responding to whether they deemed the case to be admissible before the Committee and not providing a response as to the actual merits of the case. He also informed that the State declared in their response to the Committee decision that a large amount of information had not been provided due its sensitive nature and that it had hesitated to submit it on privacy grounds.

Mr Shearer went on to say that the author of the communication was in receipt of this new information and had requested that the Committee defend its decision in her case. He reminded the Committee that they had previously expressed regret to the State for its refusal to accept its decision and had concluded there were no grounds to reopen the case. He also noted the lack of provision under the Covenant for the right of appeal, although he stressed that the Committee could reconsider its views if an obvious error had occurred. However, Mr Shearer also warned that a State could not provide information after the timeframe for submission has expired and then expect the Committee to reconsider. He did state, however, that he felt that this was perhaps a genuine misunderstanding on the part of the State. Furthermore, he acknowledged the considerations of the Committee on the Rights of the Child. Therefore, Mr Shearer recommended that there could be no useful purpose in pursuing dialogue with the State.

Following his initial presentation members of the Committee made comments concerning this matter. Mr Iwasawa acknowledged the unfortunate misunderstanding by Canada. He noted that the State only provided detailed information after the Committee had made its decision. He said that under the circumstances he agreed with the proposed decision that no useful purpose would be served in continuing dialogue with the

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<sup>3</sup> The substance of the complaint itself was not detailed.

<sup>4</sup> "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."  
<http://www2.ohchr.org/english/law/ccpr.htm#art9>

<sup>5</sup> Although not detailed, Mr Shearer noted that responses to questions by the CRC had been appended to the State's communication.

State. Ms Palm stated that she remembered the State had in fact been reminded, on several occasions, that they should provide answers on merits and not just admissibility. She also noted that the Secretariat had not received replies and that this had not been reflected in the report of the rapporteur. She stressed that it was important that this information be included in the report as it may be seen that the Committee took up the case prematurely. She expressed her regret that the State was unwilling to accept the views of the Committee, and agreed that there is no useful purpose in continuing dialogue. Mr O'Flaherty was succinct in his thoughts on the matter, merely stating that the communication put forward to the State contained very definite instructions.

Mr Lallah wished to make the point that the State argued that the child had not appeared before the Committee and wondered if this could be kept on the Committee's position of admissibility. He also wondered if this could be accepted on behalf of the mother and the child. Mr Shearer responded that the mother, on behalf of herself and her daughter, had brought the communication before the Committee.

A communication was proposed to be sent to the State detailing the Committee's regret that it would not accept the Committee's views. Ms Palm was not happy with the last sentence of the proposed communication to the State concerning the State's reasoning against the Committee's decision. The proposed sentence was not detailed however, Ms Palm offered an alternative<sup>6</sup> as she felt the original allowed the view that the State was correct in their approach and wished it to be changed. Mr Shearer accepted this point.

### **Belarus**

The communication brought before the Committee against Belarus related to a freedom of association matter. Mr Shearer noted the dissolution of a local NGO. Furthermore, the State had contested the decision made by the Committee and had not allowed re-registration of the NGO or paid compensation to the complainants. Mr Shearer said that no further communication had been received by the State and recommended that the Committee reiterate their decision and regret the refusal of the State to accept the Committee's views. He further recommended that the matter be listed as ongoing.

### **Iceland**

The matter brought before the Committee concerned the entire Icelandic legislative scheme for the allocation of fishing licences. Mr Shearer said that the Committee had provided dissenting opinions when the matter initially came before it, but they had sent a decision. He said that the State response was lengthy, and made a special point that the State had asked whether making minor changes to the scheme would be sufficient for the Committee. Mr Shearer asked for clarification as to the Committee's decision, but put forward that his memory of the case was that they had called for a radical change to the scheme. Therefore minor adjustments would not suffice. He also noted that the State stipulated that to implement the Committee's views would require a vast overhaul of the entire basis of the scheme. However, he said that also according to the State response, the current Government has issued a decision to conduct a study of the system including quotas on fisheries and related development issues. This, Mr Shearer noted, is to be a long-term plan and as a result no compensation is to be paid, as they are concerned about a run of complaints.

Mr Shearer recommended that the Committee request to be informed of the status of the study and to consider the dialogue ongoing.

Following the presentation of the report by Mr Shearer, Mr O'Flaherty noted that Iceland had given an impressive and encouraging response to the Committee. He also saw it as reasonable that the State should seek clarification as to the decisions sent by the Committee. He stated that as far as he was aware the

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<sup>6</sup> The sentence proposed by Ms Palm ran along the lines of : The Committee regrets that the State Party is not ready to accept the Committee's views but given the State Party's position, the Committee can see no useful purpose to continue dialogue.

Committee had not asked for radical reform of the fisheries scheme but had asked for a review. Any scheme adopted by the State would be sufficient as long as it was in compliance with Article 26 of the Covenant.<sup>7</sup> Mr O’Flaherty also respected the quandary the State faced concerning compensation and expressed his doubts at the remedies the Committee sometimes proposes. He suggested that a working paper be produced on the issue of the Committee’s remedies to ensure consideration of a more systematic approach.

The idea of drawing up a table of remedial measures was deemed a useful exercise by the Committee.

### **Jamaica**

Mr Shearer introduced the case brought before the Committee against Jamaica. He said this involved inhuman detention and the absence of legal representation at trial, in contravention of Article 14 of the Covenant.<sup>8</sup> He said that the Committee had received a response from the State in 2003. However, the author of the communication has since informed the Committee that the conditions of detention have worsened. Furthermore, there has been no offer of adequate compensation, no improvement of facilities and no consideration for early release by the State. Mr Shearer said that correspondence from the Permanent Mission in Geneva stated that the requests have been forwarded to the capital and noted there had been no response. He was unsure if a deadline had been set by the Committee for a response by the State and therefore recommended that the Committee consider the dialogue ongoing.

Ms Fox, on behalf of the Secretariat, stated that a deadline of two months had been set for a reply from the State. She noted that a communication had been received from the Permanent Mission to Geneva stipulating that the request had been forwarded to the capital. She added that no further communications had been received.

Ms Chanet expressed her concerns regarding the situation, stating that the Committee needed to put pressure on the State and could not confine itself to a mere response. Mr Shearer acknowledged her concerns and stated that a strong reminder would be sent and that the matter would be addressed at the next session in October.

### **Serbia**

The communication brought before the Committee against Serbia concerned freedom of expression.<sup>9</sup> Mr Shearer stated that the Committee had previously recommended the quashing of the conviction of the complainant and the provision of restitution by the State. He further stated that in June 2008 the Secretariat received a report by the United Nations Development Programme that the complainant had signed an agreement for reparation and restitution, which had been confirmed by the Permanent Mission of Serbia in Geneva. The Mission confirmed in July that the restitution at 10,000 Euro had been successfully completed. However, he noted with concern that whilst restitution had been granted the State had been silent on the

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<sup>7</sup> “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” <http://www2.ohchr.org/english/law/ccpr.htm#art26>.

<sup>8</sup> (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; <http://www2.ohchr.org/english/law/ccpr.htm#art14>

<sup>9</sup> “1. Everyone shall have the rights to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice...” <http://www2.ohchr.org/english/law/ccpr.htm#art19>

quashing of the conviction. He suggested that the Committee may wish to return to this matter and recommended that it be considered ongoing.

### **Sri Lanka**

Mr Shearer said that the complaint against Sri Lanka concerned the detention and disappearance of an individual. The State had claimed that criminal proceedings were still pending in February 2005 against those thought to be responsible for the abduction of the complainant's son. He stated that as of April 2008, the complainant had stated no action had been taken. The complainant had also stated that the Sri Lankan Human Rights Commission had conveyed their views to the State concerning compensation but there had been no response to this either. Mr Shearer said that the complainant's most recent submission had been forwarded to the State but no reply had yet been received. He recommended that the matter be considered ongoing and asked whether there should be something more the Committee should do.

### **Tajikistan**

The communication brought before the Committee concerned torture, forced confession and detention. Mr Shearer said that the State's most recent response reiterated its previous arguments and referred the Committee to the Office of the Prosecutor General and the decision of the Supreme Court. Following the decision issued by the Committee the complainant provided additional information. He stated that he was found guilty on only one count (he had previously stood trial on three counts) but that the sentence remained at 25 years imprisonment and no compensation was forthcoming.] Mr Shearer said that he had met with the State representative in New York earlier in 2008. He noted that a positive discussion had taken place, whereby it was suggested that he might undertake a follow-up mission Tajikistan on this and other matters. However, despite the Committee sending a reminder, the State had not proffered such a formal invitation. He recommended that the State response be deemed unsatisfactory and that the matter be considered ongoing.

### **Zambia**

Mr Shearer introduced a case concerning the ill-treatment of an inmate held in Zambia. He said the Committee had previously recommended the commutation of the inmate's death sentence.<sup>10</sup> He noted that such a commutation had not occurred but the inmate was moved from death row to an area for long term sentences. However, a short time later the inmate was moved back to death row. He said this was a 'strange' situation and noted that the most recent information received from the State was a copy of the conviction which stipulated an 18-year prison sentence and the death sentence. Furthermore, he said the current status of the individual is unclear with the implementation of the death penalty dependant on the current moratorium. It appears that there is to be no immediate commutation of the death penalty. Mr Shearer recommended that the State response be deemed unsatisfactory and the matter be considered ongoing.

### **Sweden**

Mr Shearer did not provide details of the case itself but informed the Committee that in July of this year the complainant had received the equivalent of 500,000 Swiss francs by the Government of Sweden and that the Permanent Mission to Geneva had confirmed this.

Following the problems highlighted with communications from Canada Mr Shearer concluded that State submissions to requests for information on individual communications should be made wholly on merits. The report was duly adopted, as orally amended.

Last revised and updated: 15 September 2008.

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<sup>10</sup> Details of this communication were not made available.

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