

2021 Yearbook

The Committee on Economic, Social and Cultural Rights



The Global Initiative
for Economic, Social and Cultural Rights

A Message from our Executive Director



The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) are delighted to share with you the latest Yearbook of the Committee on Economic, Social and Cultural Rights, now in its fifth edition.

The Yearbook offers an up to date, concise and comprehensive overview of all of the Committee's work throughout 2021. This was a year in which the Committee tackled a broad range of threats to Covenant rights, from environmental breakdown and the coronavirus pandemic to the global intellectual property regime and new sources of gender inequality.

The Yearbook captures how these issues are dealt with across the full breath of the Committee's activities, including its individual communication decisions, its concluding observations

on State reviews, the latest alterations made to its working methods, and the progress that it has made on developing new General Comments.

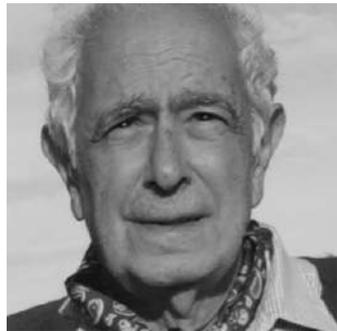
GI-ESCR publish the Yearbook each year with the objective of ensuring that the Committee's important work can reach as broad an audience as possible. Over the past five years it has served as a practical tool for representatives of civil society, States and academic researchers, and has helped to bring the Committee's work closer to all those interested in the international protection of economic, social and cultural (ESC) rights.

We hope that you can continue to make good use of the rich materials that can be found in the pages that follow.

Magdalena Sepúlveda Carmona

Executive Director of GI-ESCR

A Message from the Committee Chair



It gives me great pleasure to introduce the 2021 edition of the Yearbook of the UN Committee on Economic, Social and Cultural Rights (CESCR) which, like its four previous editions, has been ably prepared and published by GI-ESCR. The Yearbook, which is an indispensable tool for experts, activists and defenders, offers a comprehensive compilation of all of the CESCR's activities throughout 2021. Like my two predecessors, I pay tribute to GI-ESCR for their efforts and shall pursue our cooperation towards the full realisation of ESC rights for all without discrimination.

As the Yearbook shows, the CESCR continued its activities throughout 2021 in spite of the persistence of the Covid-19 pandemic. The Committee's 69th session was its second session held online with only two periodic reports of State Parties reviewed. The 70th session, thanks to the easing of travel and other restrictions by Switzerland, was convened in-person, allowing for better interaction with stake-holders and broader coverage of State Parties reports.

In 2021 the Committee continued to focus on the unprecedented challenges posed by the pandemic and its repercussions for ESC rights worldwide. In dealing with State Parties reports in 2021 the CESCR probed deeply into their handling of the Covid-19 pandemic and its impact on ESC rights and formulated its Concluding Observations accordingly. The Committee also published its third statement on the pandemic, addressing universal vaccination, international cooperation and related issues of intellectual property rights.

The Covid-19 pandemic was not the only challenge addressed by the CESCR in 2021. Other challenges to the enjoyment of

ESC rights unfortunately continued to persist: discrimination, poverty, unemployment, lack of worker's rights, lack of social security coverage, housing problems including forced evictions, hunger and under-nutrition, problems related to education, science and culture, as well as environmental degradation.

With this broad spectrum of CESCR activities throughout 2021, the Committee continued to develop General Comments, indispensable for reinforcing its jurisdiction. The first draft of our General Comment on "Land and the International Covenant on ESC Rights" was published and work on our forthcoming General Comment on "Sustainable Development and the International Covenant on ESC Rights" continued. The CESCR also published a record number of decisions on individual communications, as well as a draft "Revised Rules of Procedure" under the Optional Protocol to the International Covenant.

Throughout 2021, the CESCR continued to work on the future role of the human rights treaty bodies. Close to the end of the year, it submitted, alongside other treaty bodies, its paper on "The Strengthening of the Human Rights Treaty Bodies". This paper outlines the Committee's desire to move to a predictable reporting calendar and offer the simplified reporting procedure to all States Parties. The CESCR has been committed to these goals since before 2021, but it was in this year that it sought the means to implement them, including through a third session.

There are many lessons to be learnt from 2021. One main lesson is that the enjoyment of ESC rights remains vulnerable, not only to the Covid-19 virus, but also a number of other challenges. For the world to become a healthier and safer place, this vulnerability has to be brought to an end.

Mohamed Ezzeldin Abdel-Moneim

*Chair of the Committee on Economic,
Social and Cultural Rights*

The Committee on ESC Rights

THE COMMITTEE AND THE COVENANT

An introduction

The Committee on Economic, Social and Cultural Rights (CESCR) is the expert human rights body tasked with monitoring implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The ICESCR is a binding treaty which contains human rights such as the right to just and favourable conditions of work, the right to an adequate standard of living, the right to education, and the right to take part in cultural life. It entered into force in 1976 and has a total of 171 State Parties. There were no new ratifications of the Covenant in 2021.

The Committee has three key functions to monitor State Parties' compliance with their obligations under the Covenant:

1) Reviewing States through the Reporting Procedure

The Committee reviews periodic State reports in which parties to the Covenant must detail the measures that they have taken to realise the rights of those within their jurisdiction (see pages 6 & 7).

2) Considering Individual Communications under the Optional Protocol

Since the entry into force of an Optional Protocol (OP) to the ICESCR in 2013, the Committee has been empowered to consider complaints brought by individuals who allege that their Covenant rights have been violated by a State Party to the OP. (see pages 8 & 9). There are currently 26 State Parties to the OP. There were no new ratifications during 2021, although Cyprus did sign the OP, bringing the total number of signatories to 46.

3) Developing General Comments and Statements, and engaging in other thematic work

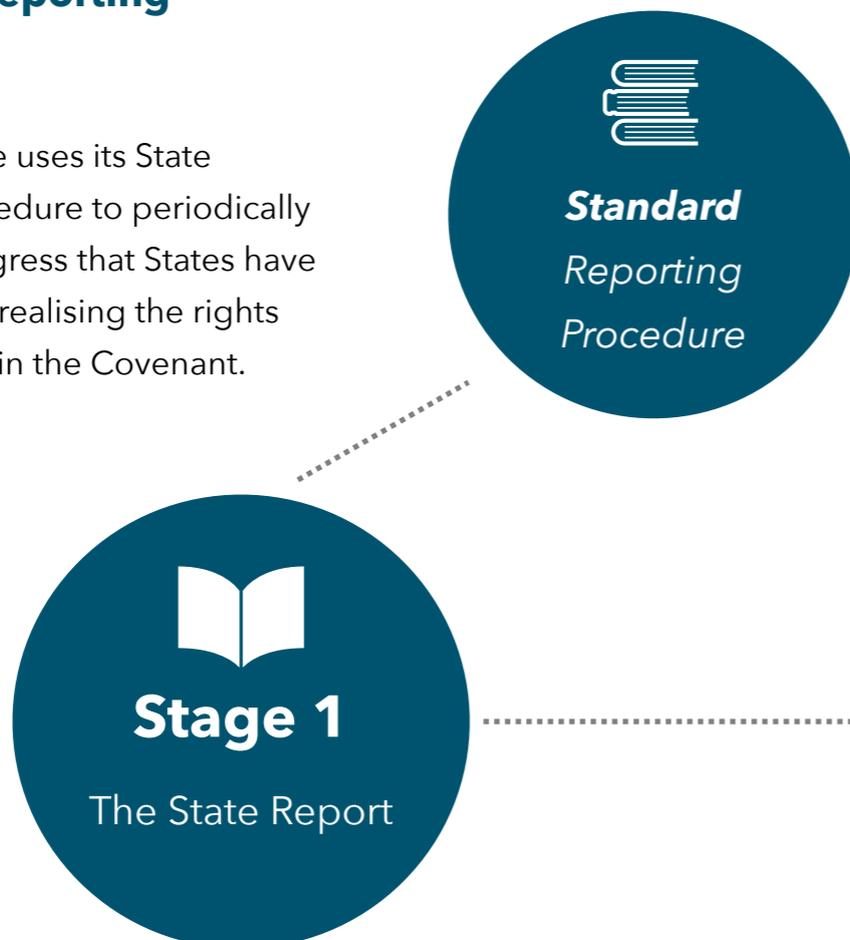
The Committee provides authoritative interpretations of Covenant rights by drafting General Comments. It also publishes Statements and Open Letters in which it clarifies Covenant obligations and offers States guidance in applying them to pressing issues (see page 10)



The Committee holds its sessions in Palais Wilson, which is located in Geneva, Switzerland.

The State Reporting Procedure

The Committee uses its State reporting procedure to periodically assess the progress that States have made towards realising the rights contained within the Covenant.



Standard Reporting Procedure

If a State follows the standard reporting procedure, it must first submit a period periodic report to the CESCR. This report should outline all of the steps that the State has taken to realise Covenant rights.

A pre-sessional working group of the Committee then considers this report and prepares a List of Issues (LOI). In the LOI it requests further information that it believes will be required for the review. The State then replies to the LOI in a shorter report.

Continues to stage 2 on the next page →

STAGE 1: The state report

The first stage of the State reporting procedure depends on whether the State under review follows the *standard* reporting procedure or the *simplified* reporting procedure. The *simplified reporting procedure* has thus far only been made available to a limited number of States on a Pilot basis.

Simplified Reporting Procedure

If a State uses the simplified reporting procedure, the reporting process begins with a pre-sessional working group of the Committee preparing a List of Issues Prior to Reporting (LOIPR).

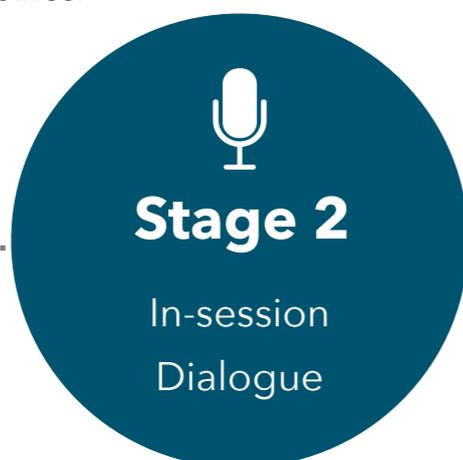
The LOIPR requests information on the issues that the Committee considers necessary to conduct a review of the State's implementation of the Covenant.

The State then submits a response to the Committee's questions. The response is treated as its periodic report to the CESCR.

STATE REPORTING

STAGE 2: In-session dialogue

The Committee then invites a delegation of the reviewed State to Geneva, where it hosts a six-hour constructive dialogue on the State's periodic report. During the dialogue, Committee members comment on the progress of the reviewed State and ask questions to representatives from various ministries.



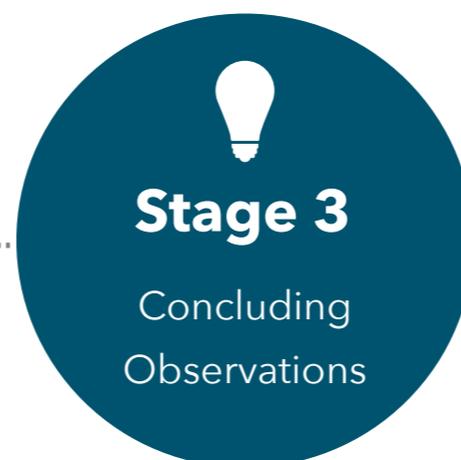
STAGE 3: COBs

The Committee then proceeds to adopt a set of Concluding Observations (COBs). The COBs consist primarily of concerns that the Committee has identified during the course of the review, as well as recommendations on how the State can improve the enjoyment of Covenant rights within its jurisdiction.

STAGE 4: Follow-up to COBs

In each set of COBs, the Committee selects up to three recommendations for its follow-up procedure.

These are recommendations that "require urgent attention" and "should be attainable within a period of 24 months".



Civil society engagement

The Committee receives and considers information from civil society in advance of each stage of the reporting process, including the LOI/ LOIPR, the in-session dialogue, and the follow-up to COBs.

These civil society reports - referred to as "shadow" or "parallel" reports - play a vital role informing the Committee of human rights issues and allowing it to identify important

Within these 24 months, States are expected to submit a report on the steps that they have taken to implement the three recommendations. The Committee then evaluates the State's action and, for each recommendation, gives a grade of "sufficient progress", "insufficient progress", "lack of sufficient information to make an assessment", or "no response".



developments. They are especially crucial for the Simplified Reporting Procedure, as there is no State report to begin with.

Alongside civil society organisations, national human rights institutions and UN agencies can also submit reports to the Committee. Civil society may also deliver formal and informal oral briefings to Committee members. Organisations that are interested in making a submission to the Committee can get in contact with GI-ESCR (info@gi-escr.org) for advice on the process.

INDIVIDUAL COMMUNICATIONS

Individual Communications

Under the Optional Protocol (OP) to the ICESCR the Committee may consider individual complaints that a State Party to the OP has violated a Covenant right. Complaints can also be submitted by groups of individuals, and by third parties on behalf of a victim, individual or group (with their consent).



STAGE 1: Submission

The individual communication process starts with the submission of a complaint to the Committee. Upon the initial registration of the communication, the Committee may request that the respondent State take interim measures so as to avoid “possible irreparable damage” occurring before it makes a decision.

STAGE 2: Admissibility

The Committee begins its consideration of a complaint by assessing its admissibility against criteria contained in articles 2 and 3 of the OP.

To be admissible: domestic remedies must have been exhausted; the alleged violations must have occurred after entry into force of the Protocol for the State concerned; the same matter must not

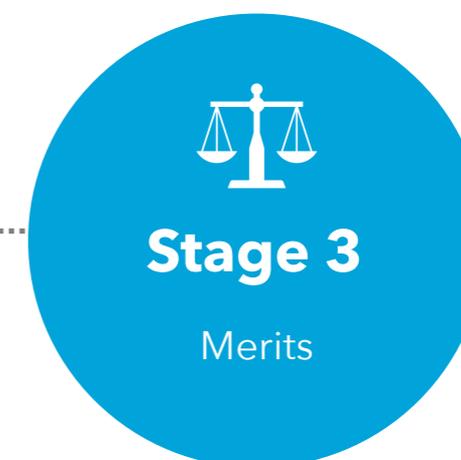


STAGE 3: Merits

If a communication is admissible, the Committee will proceed to consider it on its merits. At this stage, the Committee must determine whether the actions or omissions of the respondent State can be reasonably justified given their procedural and substantive obligations under the Covenant. The intensity of the Committee’s scrutiny will vary depending on the circumstances of each case.

have been examined or be under examination by the Committee or another Treaty Body; the complaint cannot be manifestly ill-founded, insufficiently substantiated, or exclusively based on mass media reports; and the complaint cannot be an abuse of the right to submit a communication.

If it does not meet all of the criteria, a complaint will be declared inadmissible and the communication process will end.



Continues to stage 4 on the next page →

When the Committee engages in close scrutiny, its approach resembles proportionality analysis. Accordingly, when a State has imposed a *prima facie* restriction on a Covenant right, it may be asked to justify that its actions: are authorised by law, have a legitimate objective, are rationally connected to this objective, are the minimum interference with the right that will achieve the objective, and impose a burden that is not disproportionate to its benefit.

INDIVIDUAL COMMUNICATIONS

STAGE 4: Recommendations

If the Committee establishes that the respondent State Party has violated the Covenant it will make individual recommendations in respect of the author, which are specific to the case at hand (e.g., recommending payment of compensation).

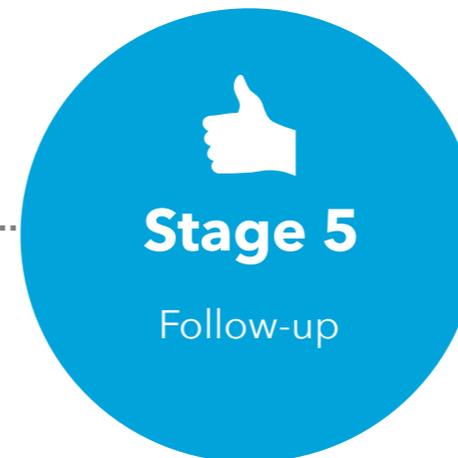
It will also make General Recommendations which are designed to ensure that the respondent State Party removes structural impediments to the realisation of the right in question (for example, it may recommend implementing new legislation).



STAGE 5: Follow-up

The OP provides the basis for a follow-up mechanism, according to which State Parties are given six months to submit a report on the measures that they have taken to implement the Committee's recommendations.

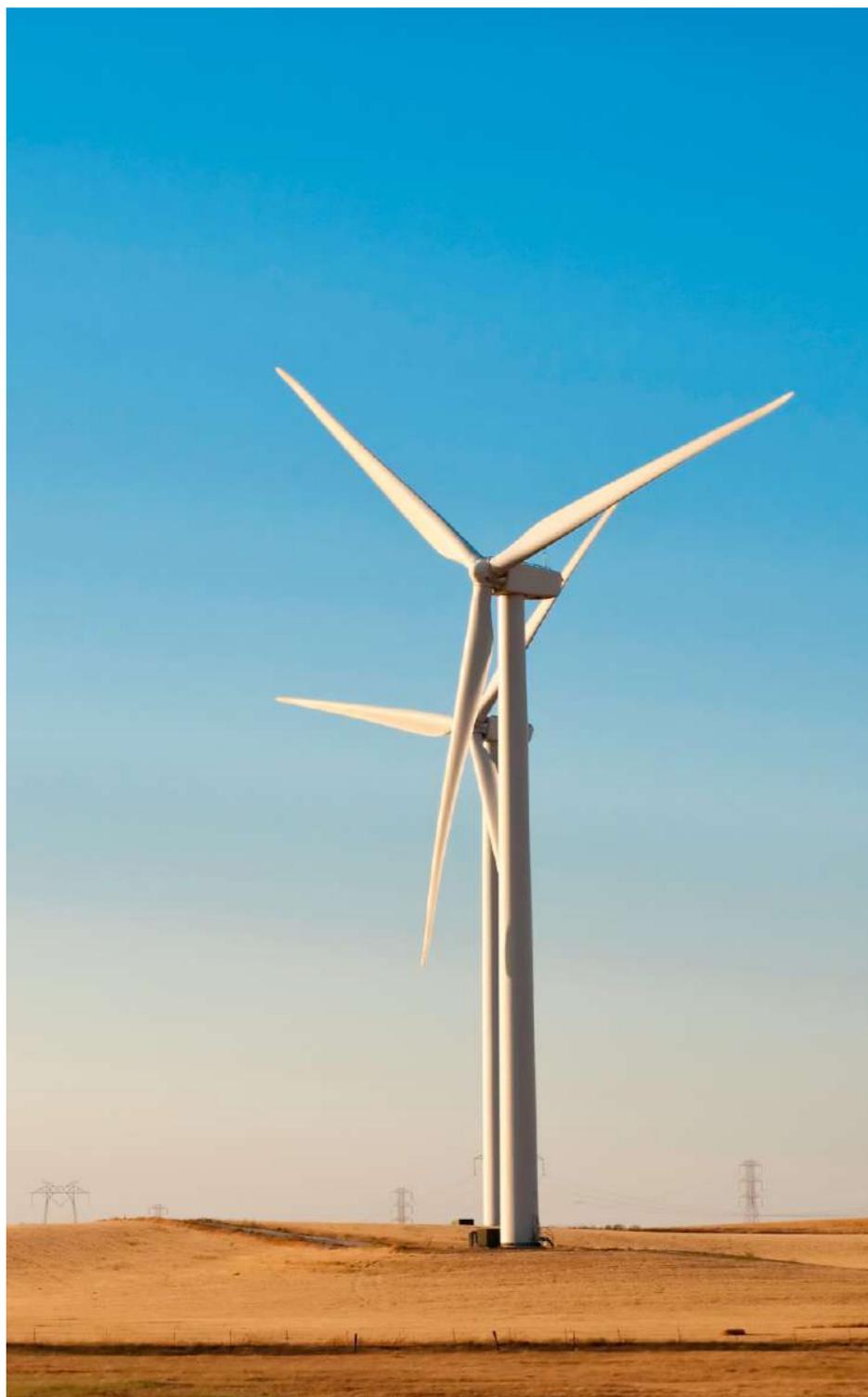
The Committee then assesses whether the State has satisfactorily implemented its views. If it determines that they have not done so, it will keep the communication under review and request further action or information.



Friendly Settlements and Discontinuance Decisions

In accordance with article 7 of the OP, the Committee can make available its good offices with a view to reaching a friendly settlement of a dispute on the basis of respect for the obligations contained in the Covenant. A settlement will close consideration of the communication.

The Committee may decide to discontinue a communication by ending it before a final determination has been reached. This may occur at the request of the author or State, or simply because the Committee has lost contact with the individual that submitted a communication.



The Committee is currently developing a General Comment on Sustainable Development and a General Comment on Land.

The Thematic Output of the Committee on ESC Rights

The CESCR regularly provides analysis and guidance on a range of thematic issues related to economic, social and cultural rights.

General Comments

General Comments are used to provide policy advice, as well as authoritative interpretations of the normative content of Covenant rights and State obligations.

They are usually formulated following a Day of Discussion with civil society and other stakeholders, who are invited to provide input at various stages in the process.

As of 2021, the Committee has published a total of 25 General Comments. These General Comments have been cited in the jurisprudence of domestic constitutional courts across the globe, as well as by a range of other judicial bodies.

Statements

The Committee has also established a practice of adopting Statements in which it sets out Covenant obligations and applies them to issues that it considers to be of importance.

Shorter and more informal than General Comments, Statements afford the Committee a degree of flexibility and allow it to engage with pressing ESC rights developments. All three of the Committee's latest Statements have been dedicated to addressing different facets of the coronavirus pandemic.

Open letters

In the past, the Committee has made use of Open Letters as a means of establishing how Covenant obligations relate to policy developments in States that are party to the Covenant. In 2012, for example, the Chair of the Committee wrote an open letter addressing the widespread adoption of austerity measures in the wake of the financial crisis.

The Committee in 2021

COMMITTEE MEMBERS



Committee members in 2021 (note that the members are not pictured in the order of the names listed below).

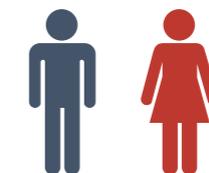
-  Mr. Mohamed Ezzeldin Abdel-Moneim (Egypt) (Chair)
-  Mr. Aslan Abashidze (Russia)
-  Mr. Renato Zerbini Ribeiro Leão (Brazil) (Chair)
-  Mr. Asraf Ally Caunhye (Mauritius)
-  Mr. Yongxiang Shen (China)
-  Mr. Ludovic Hennebel (Belgium)
-  Mr. Mohammed Amarti (Morocco)

-  Mr. Nadir Adilov (Azerbaijan)
-  Mr. Michael Windfuhr (Germany)
-  Mr. Mikel Mancisidor (Spain)
-  Mr. Rodrigo Uprimny (Colombia)
-  Mr. Peters Omologbe Emuze (Nigeria)
-  Mr. Seree Nonthasoot (Thailand)

-  Ms. Laura-Maria Crăciunean-Tatu (Romania)
-  Ms. Karla Vanessa Lemus De Vásquez (El Salvador)
-  Ms. Preeti Saran (India)

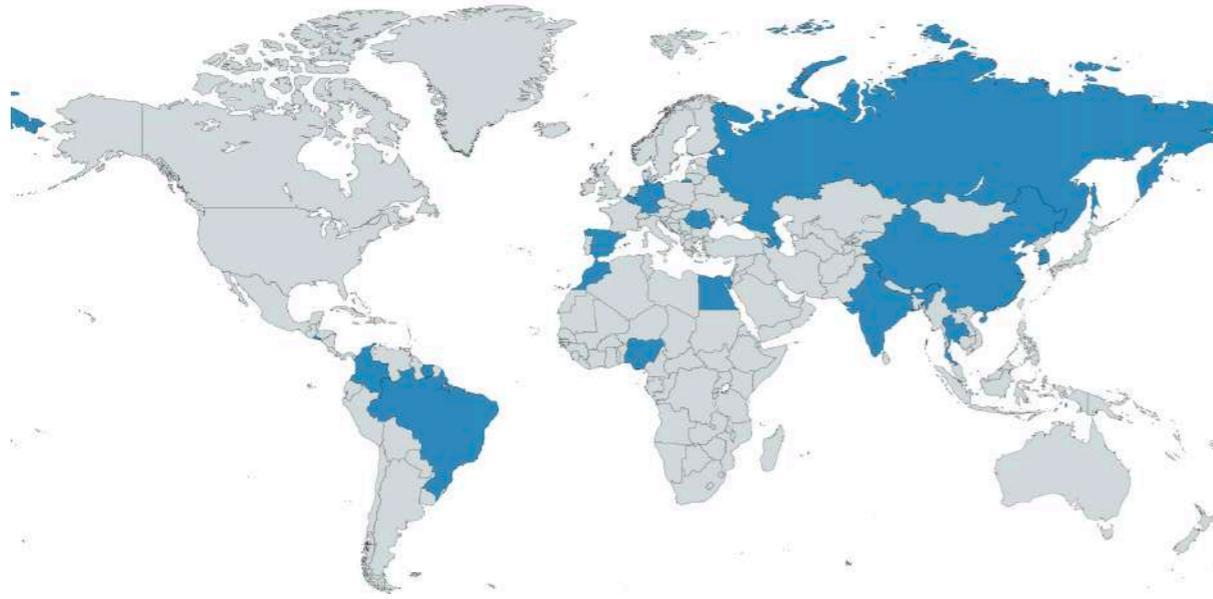
-  Ms. Heisoo Shin (Republic of Korea)
-  Ms. Lydia Ravenberg (Suriname)

13 Men



5 Women

THE COMPOSITION OF THE COMMITTEE



Geographical distribution of 2021 committee members.

Committee Diversity

Members of the Committee serve in their personal capacity and are elected for four-year terms.

Regional groupings are each allocated a quota of Committee seats that aligns with the number of State Parties to the Covenant.

At present, "African States", "Asian States", and "Latin American and the Caribbean States" each have four seats, whilst "Eastern European States" and "Western Europe and Other States" each have three seats.

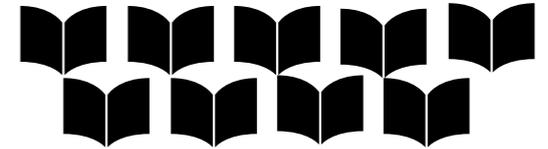
Following elections that took place in 2020, it is now the case that a mere five of the Committee's 18 members are women. Moreover, more than half of the Committee is now composed of academics.

Fresh elections will take place in 2022 in relation to the seats of the nine Committee members whose term will finish at the end of that year. These elections provide an opportunity for States to secure greater diversity on the Committee.

In 2021 the Committee was composed of:

10

Academics



3

Current or Retired Diplomats & Government Officials



1

Policy Institute Vice President



1

Public Prosecutor



1

Judge



1

NGO Director



1

National Human Rights Institution Representative



State Reporting in 2021

2021 OVERVIEW

States reviewed in 2021

The Committee reviewed 7 States in 2021: Finland, Latvia, Azerbaijan, Bolivia, Bosnia and Herzegovina, Kuwait, and Nicaragua. This is slightly fewer than the number of States that would normally be reviewed in a year. This was a consequence of the coronavirus pandemic which meant that the Committee only conducted two reviews in its 69th session, which was held entirely online.

Follow up in 2021

The Committee published its evaluation of whether 8 State Parties had implemented the key recommendations it had identified in its previous Concluding Observations. These States were Argentina, Germany, Niger, Cameroon, Estonia, Kazakhstan, Mauritius, and South Africa.

Overdue reports and backlog

As of 15th October 2021, a total of 32 State reports had been submitted and were awaiting consideration by the Committee. These reports were submitted by: Yemen, Serbia, Uzbekistan, Democratic Republic of the Congo, Czech Republic, El Salvador, Guatemala, Bahrain, China (including Hong Kong, China, and Macao, China), Belarus, Luxembourg, Tajikistan, Panama, Lithuania, Portugal, Brazil, Cambodia, Armenia, Mauritania, Chad, Qatar, State of Palestine, Romania, Ireland, Iraq, Kyrgyzstan, Italy, Mongolia, Indonesia, France, Albania, and Iceland.

As can be seen from the graph on the left, this is a significant increase on the number of reports that were pending at the same stage of last year (19). Whilst much of the increase can be attributed to the disruptive effects of the Covid-19 pandemic, the Committee is struggling to keep up with the number of State reports that are submitted each year and its backlog is rapidly approaching the levels that it reached a decade ago.



Total number of pending State reports.

2021 KEY THEMES IN CONCLUDING OBSERVATIONS

A number of important themes emerge from the Committee's Concluding Observations (COBs) on the seven States that it reviewed in 2021.

The Committee was particularly interested in how States had managed the Covid-19 pandemic and made recommendations that touched upon the impact of coronavirus on numerous Covenant rights. This included various observations on the healthcare response to Covid-19. For example, the Committee commented on the lack of measures that Bosnia and Herzegovina had taken to contain the virus and called on Finland to use its leverage in international organisations to advocate for universal vaccine access. It also issued a series of recommendations on Covid-19 and unemployment, the informal economy, social security, human rights defenders, poverty, internet access and education.

Most COBs began with observations on the domestic application of the Covenant and an evaluation of the independence and effectiveness of a State's National Human Rights Institution. The Committee outlined how the

Covenant should be applied by Azerbaijan to its military activities in Nagorno-Karabakh, by Bolivia and its autonomous institutions, and Bosnia and Herzegovina and its complex decentralised governance system. It also called on Nicaragua to re-establish cooperation with international human rights mechanisms, following the State's refusal to engage in constructive dialogue with the Committee.

The Committee also provided guidance on budget allocation, fiscal policy and the obligation of States to mobilise their maximum available resources. For example, it recommended that Bolivia establish a progressive tax system designed to reduce inequality. The Committee also raised concerns about the prevalence of corruption in a number of States, including Latvia, Nicaragua, Azerbaijan, and Bosnia and Herzegovina.

The Committee grappled with the climate emergency in the majority of its reviews. It linked fossil fuel dependence to air pollution in Bosnia and Herzegovina, stressed that climate change

will aggravate food security in Azerbaijan, and urged Latvia, Azerbaijan, Bolivia and Kuwait to do more to achieve their nationally determined contributions under the Paris Agreement.

Concerns about the impact of businesses on Covenant rights were raised in a number of COBs, including those on Kuwait, Finland and Azerbaijan. The Committee also called upon Nicaragua and Bolivia to take action to secure the rights of indigenous peoples, particularly their right to be consulted with a view to obtaining their free, prior and informed consent to projects that affect their territories.

The Committee raised concerns about discrimination experienced by a number of different groups: the Bidoon in Kuwait; migrants and the Sami in Finland; non-citizens and the Roma in Latvia; indigenous and Afrodescendent peoples in Nicaragua; lesbian, gay, bisexual, transgender and intersex persons in Bolivia; persons with disabilities and civilian war victims in Bosnia and Herzegovina; and internally displaced persons in Azerbaijan, to name but a few.



Due to coronavirus the Committee engaged in an online dialogue with Finland and Latvia, the first time that it has ever done this.

2021 KEY THEMES IN CONCLUDING OBSERVATIONS



Nicaragua did not submit written replies to the list of issues and declined to actively participate in the dialogue with the Committee.

The Committee made a number of recommendations on gender equality, addressing issues such as the gender pay gap, segregation in the labour market, discriminatory inheritance laws, gender-based violence and the unequal distribution of care work.

Concerns were expressed in relation to the reception and integration of refugees, asylum seekers and migrants in several States, including Latvia, Bolivia, and Bosnia and Herzegovina. The Committee called on States to provide support for language learning and to ensure that these groups could obtain non-discriminatory access to public services such as education and healthcare.

The Committee raised various concerns regarding unemployment and social security coverage and made recommendations on the operation of the informal economy and the minimum wage, as well as working conditions, unfair dismissals, and trade union rights. The experience of migrant workers was particularly prominent in the review of Kuwait, with the

Committee recommending that the crime of “absconding” be abolished.

The right to housing was raised in the majority of COBs, with the Committee urging States to expand the supply of social housing and improve security of tenure. On the right to education, various States were called upon to lower school dropout rates and do more to ensure that their education systems were inclusive and accessible to marginalised and disadvantaged groups on an equal basis.

Observations on the right to health were not limited to Covid-19, with the Committee making a number of recommendations on mental health, sexual and reproductive health, drug policies, the availability of nutritious food, and access to quality healthcare services more broadly. It also encouraged Bolivia to continue to invest in improving access to water, hygiene and sanitation services.

The Committee underscored the importance of cultural diversity in a number of its COBs. It raised

a number of concerns related to linguistic rights, highlighting the discriminatory impact of language policy in Latvia, insufficient efforts to teach in Sami languages in Finland, and the lack of recognition of all the official languages and alphabets of Bosnia and Herzegovina. The Committee also made clear its concern with Bolivian public discourse which traded on exclusionary notions of ethnic identity, pointing to the 2019 socio-political crisis in particular.

The right to enjoy the benefits of scientific progress was also raised in several reviews. The Committee recommended that Azerbaijan and Nicaragua work on reducing the digital divide, an especially salient concern as the pandemic continues to deepen reliance on internet technologies.

Finally, the Committee also advised that States take their Covenant obligations into account when implementing the 2030 Agenda for Sustainable Development and called on those that had yet to ratify the OP-ICESCR to do so.

2021 FOLLOW UP TO CONCLUDING OBSERVATIONS

Follow Up Overview

The Committee published a total of eight follow-up assessments in 2021, evaluating the extent to which Argentina, Germany, Niger, Cameroon, Estonia, Kazakhstan, Mauritius, and South Africa had implemented the three key recommendations that it had identified at the conclusion of each State's review. It found that "sufficient progress" had been made with respect to 8.5* of the 24 recommendations it marked for follow-up (35%).

Germany

The Committee noted with appreciation that Germany had undertaken fundamental reforms to care services for older persons, taken numerous measures to tackle child poverty, and significantly increased its public spending on housing. As such, it determined that the State had made "sufficient progress" in relation to all three of the key recommendations that it had marked for follow-up.

Niger

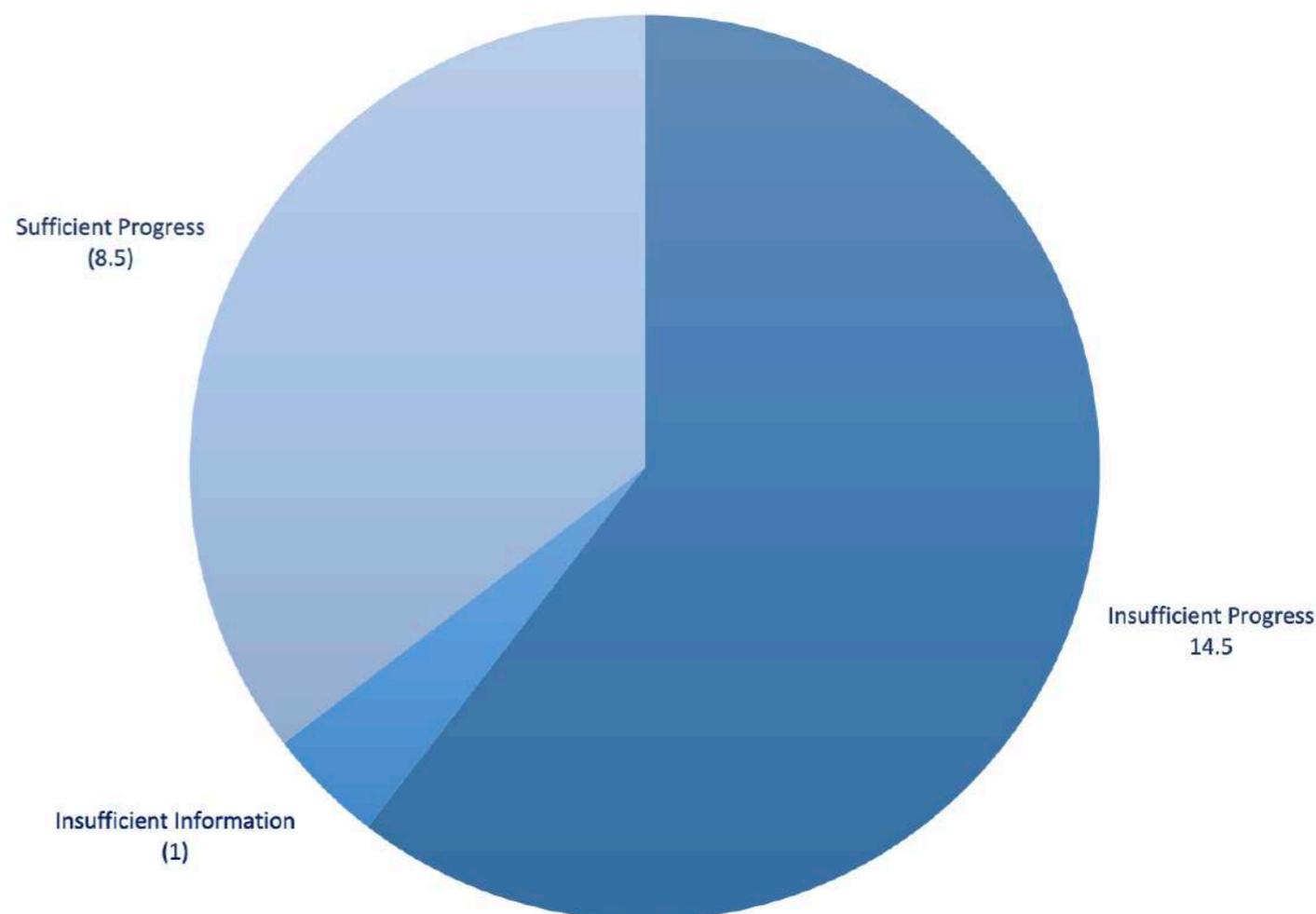
The Committee's assessment of Niger was less positive in nature. It considered that there had been "insufficient progress" in relation to its recommendations on child marriage, and on securing the right to health. The Committee also found that there was a "lack of sufficient information" to evaluate whether progress had been made on its recommendations concerning the adequacy of labour inspection.

Although "insufficient progress" was made with respect to the majority of Committee recommendations, this is a great improvement on last year, when "sufficient progress" was found to have been made in relation to only one of nine recommendations (11% of the total).

* 0.5 indicates that half of a recommendation on a topic has been satisfactorily implemented.

Argentina

The Committee considered that Argentina had made "sufficient progress" in relation to its recommendation on protocols for legal abortion, noting that legislation had been passed which allowed for voluntary legal termination up to the 14th week. "Insufficient progress" had been made in relation to its other two key recommendations, which concerned austerity measures and laws protecting indigenous territories.



Results of the Committee's follow-up assessments in 2021.



Cameroon had made “insufficient progress” on each of the key recommendations the Committee identified in 2019.

Cameroon

Cameroon received an assessment of “insufficient progress” in relation to each of the three key recommendations. The Committee pointed out that food insecurity was more prevalent in spite of efforts to secure the right to food, that the impact of measures to prevent discrimination against minorities had been limited, and that the State had not done enough to implement its recommendations on trade union rights.

Estonia

The Committee decided that Estonia had made “sufficient progress” on its recommendations on citizenship: the application procedure had been simplified and children of parents with undetermined citizenship automatically acquired citizenship. “Sufficient progress” had also been made on developing a gender-sensitive drug policy, whilst “insufficient progress” had been made on the Committee’s call to amend the Equal Treatment Act.

Kazakhstan

“Sufficient progress” had been made in respect of the Committee’s recommendations that Kazakhstan increase levels of public social expenditure and take steps to combat discrimination against foreign and internal migrants. However, the Committee considered that “insufficient progress” had been made in relation to its recommendations on both trade union rights and comprehensive anti-discrimination legislation.

Mauritius

The Committee determined that Mauritius had made “sufficient progress” on minimum wage legislation. However, “insufficient progress” had been made on its recommendation to widen the scope of the Equal Opportunities Act. “Insufficient progress” had also been made on parental leave: the State did not provide a minimum period exclusively for new fathers or offer leave to fathers on a basis that disregarded their marital status.

South Africa

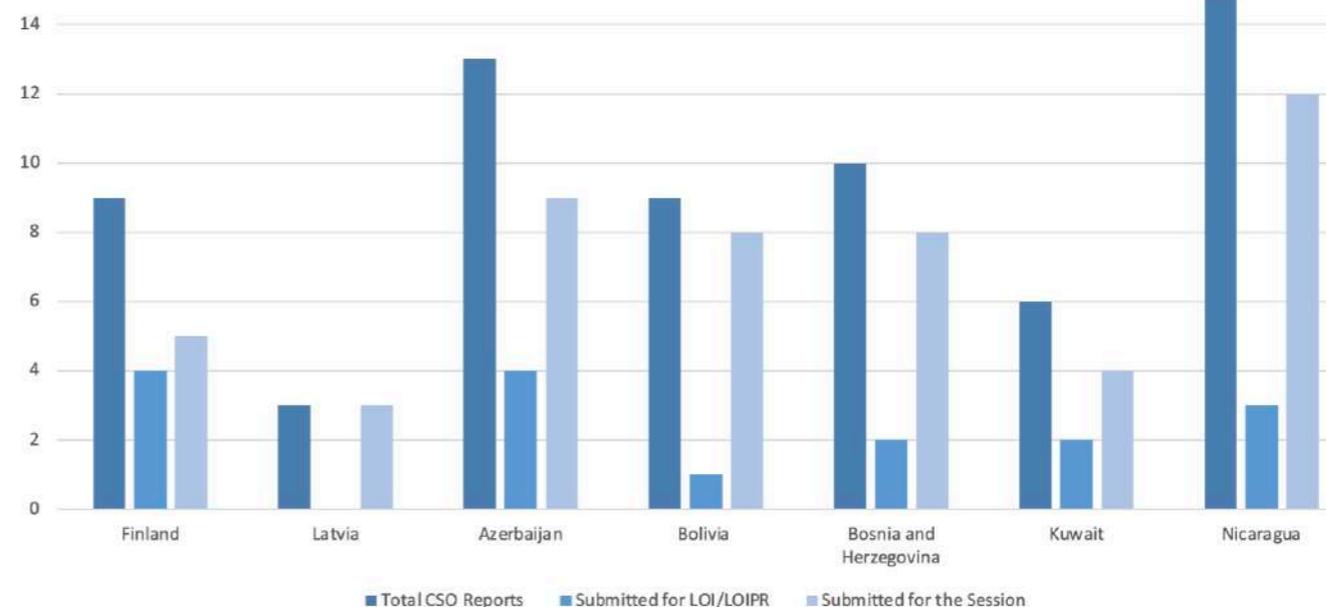
South Africa had made “insufficient progress” with regard to Committee recommendations on social security, having neither prepared a composite index on the cost of living nor done enough to ensure access to social assistance for adults aged 18 to 59. “Insufficient progress” had also been made on access to education for undocumented migrant, refugee and asylum-seeking children, as well as on malnutrition and the right to food.

2021 CIVIL SOCIETY ENGAGEMENT

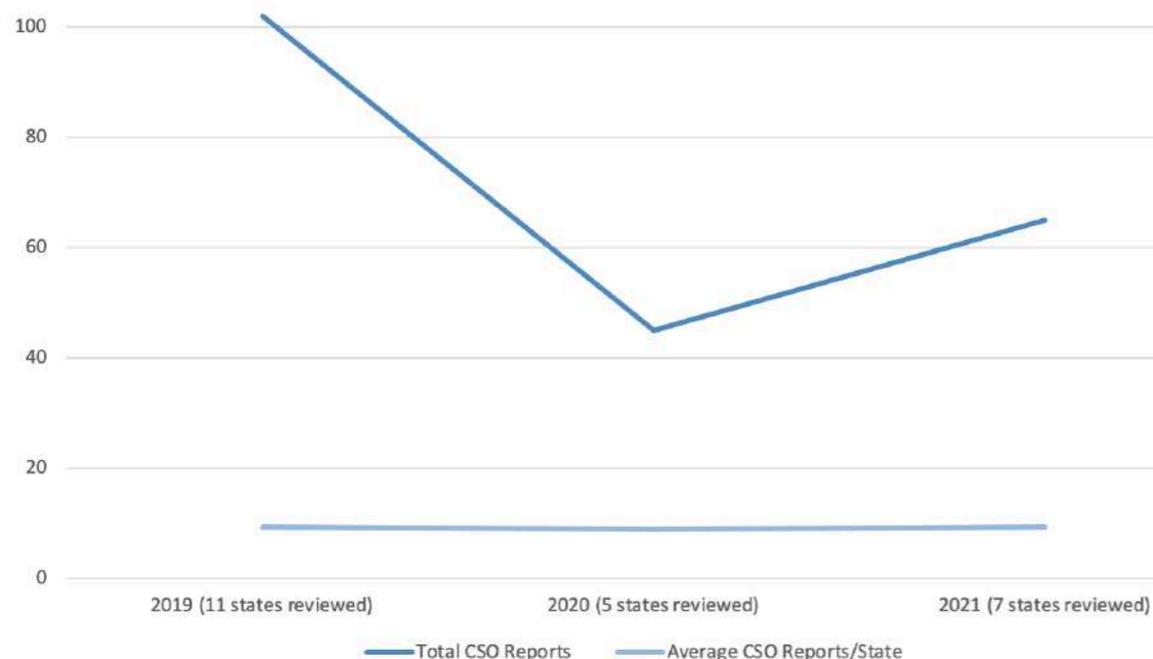
States reviewed in 2021

The Committee received a total of 65 NGO reports for the seven States that were reviewed in 2021. 16 of these reports were for the LOI/LOIPR, with the remaining 49 for the session. As can be seen from the graph on the right, Nicaragua received the most reports (15) and Latvia the least (3).

In addition to civil society reports, Finland, Latvia, Azerbaijan and Bosnia and Herzegovina each received one National Human Rights Institution (NHRI) report for the LOI/LOIPR. Finland was the only State that also received a NHRI report for the session. As can be seen from the graph below, the average number of CSO reports has remained fairly consistent over the past three years, hovering around 9 per state.



Reports submitted to the Committee by civil society organisations in 2021.



Reports submitted to the Committee by civil society organisations in 2021 over the past three years.

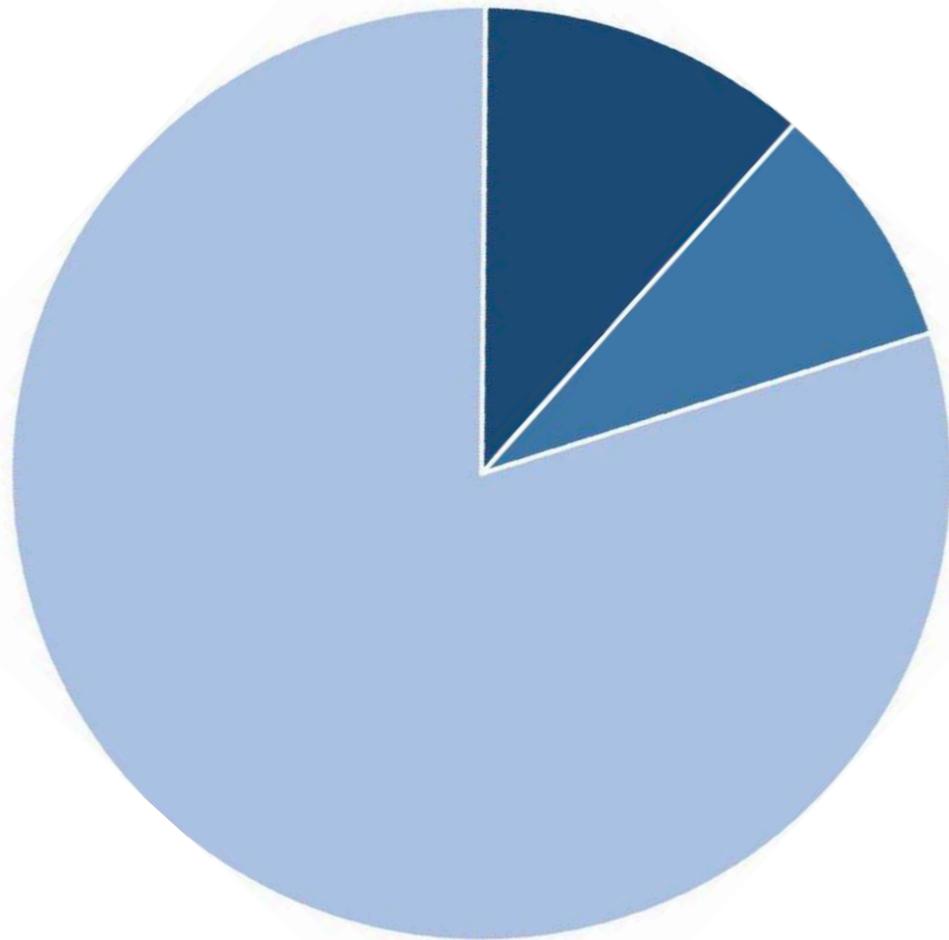
Follow-Up in 2021

Civil society engagement with the follow-up procedure remains poor. Not one single civil society report was submitted in relation to the follow-up of five of the eight States that were reviewed (Germany, Niger, Cameroon, Estonia, and Mauritius). Moreover, whilst the Committee did receive NGO reports for South Africa (five), Argentina (four) and Kazakhstan (two), three of the reports received for Argentina were submitted by a single organisation. South Africa was also the only State in which a NHRI contributed a report to the follow up process (one).

The low level of engagement with the follow-up process remains of major concern to the Committee, given that it seriously hinders its capacity to evaluate whether States have made sufficient progress in the implementation of its recommendations.

Individual communications in 2021

2021 OVERVIEW



4 Merits decisions

El Goumari & Tidli v Spain

Soraya Moreno Romero v Spain

El Ayoubi & El Azouan Azouz v Spain

Lorne Joseph Walters v Belgium

3 Inadmissibility decisions

Asmae Taghzouti Ezqouihel v Spain

Rodríguez & Dincă v Spain

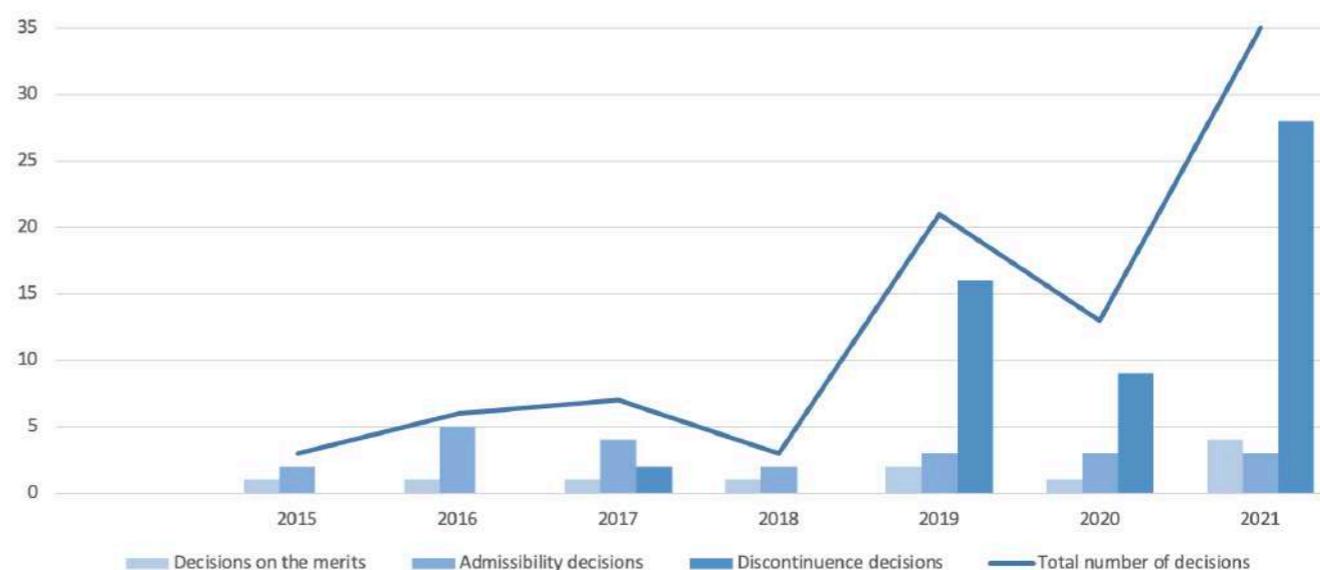
Gladis Patricia Loor Chila v Spain

28 Discontinuance decisions

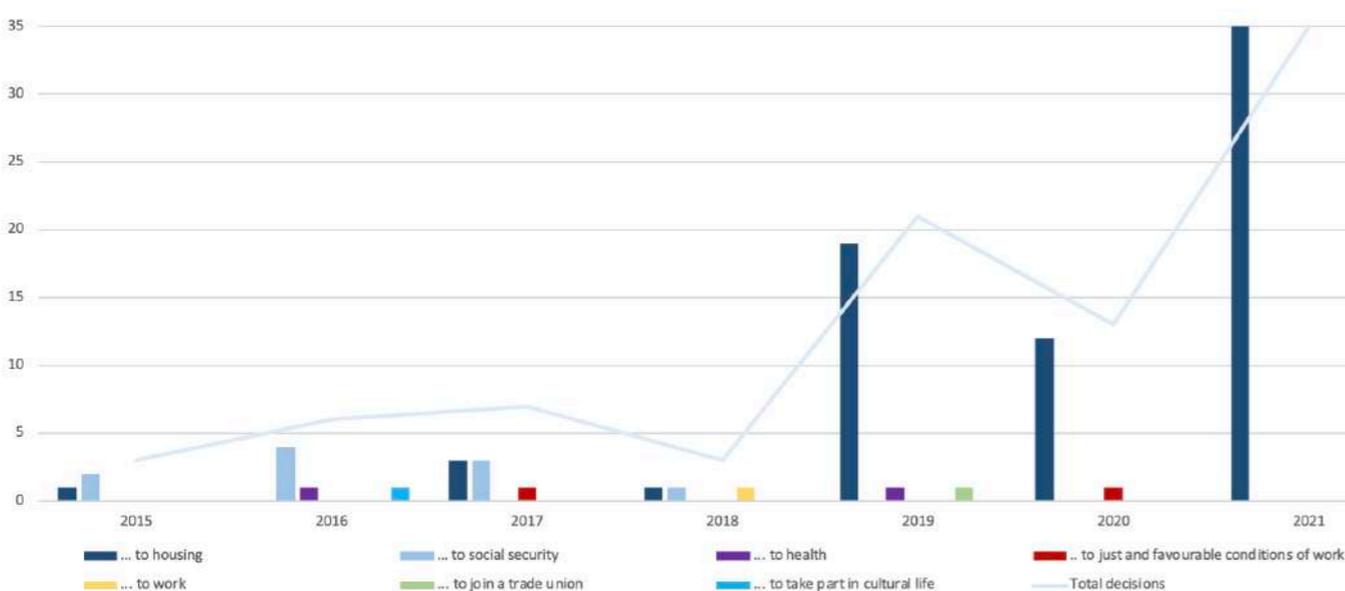
2021 IN CONTEXT

More annual decisions than ever before: The Committee continues to adjudicate on more communications than it did in earlier years of the Optional Protocol’s functioning. In 2021 it published 35 decisions, an all time high made possible by the fact that, as a result of COVID-19, it conducted fewer State reviews in its meeting time. It has now published a total of 88 decisions: eleven merits decisions, 22 inadmissibility decisions, and 55 discontinuance decisions.

The 2021 decisions include a record 28 discontinuances, a number greater than the total of all discontinuance decisions reached in previous years. The Committee’s four merits decisions was also a record - it usually decides only one or two of these a year. Moreover, no violation of the Covenant was found in one of these four merits cases (*Soraya Moreno Romero v Spain*), only the second time that the Committee has not found a violation after proceeding to this stage of analysis. Finally, the Committee made three inadmissibility decisions in 2021, a figure on par with previous years.



Annual Committee decisions according to type of the decision rendered.



Annual committee decisions by primary right concerned.

Housing cases continue to dominate: 2021 was the first year in which an alleged violation of the right to housing formed the basis of every single one of the Committee’s decisions. This continues a long term trend towards housing cases forming the vast majority of Committee decisions (currently 71 of the total 88). This trend is likely to continue, with all but three of the new communications registered in 2021 concerning the right to housing.

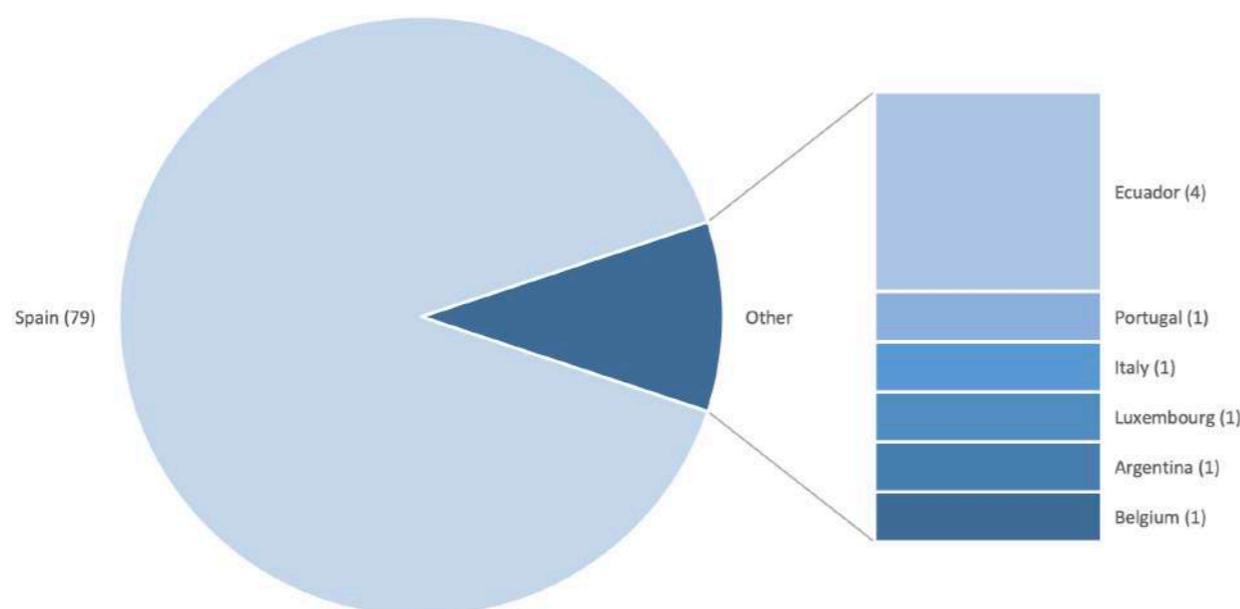
Lorne Joseph Walters v Belgium was the first time the Committee considered a housing claim addressed to a State other than Spain (Spain accounts for 70 of the 71 decisions). In 2021 the Committee registered new housing communications against Italy, Portugal, Uruguay and Argentina, meaning that it may be able to continue developing its housing jurisprudence in relation to other States.

2021 IN CONTEXT

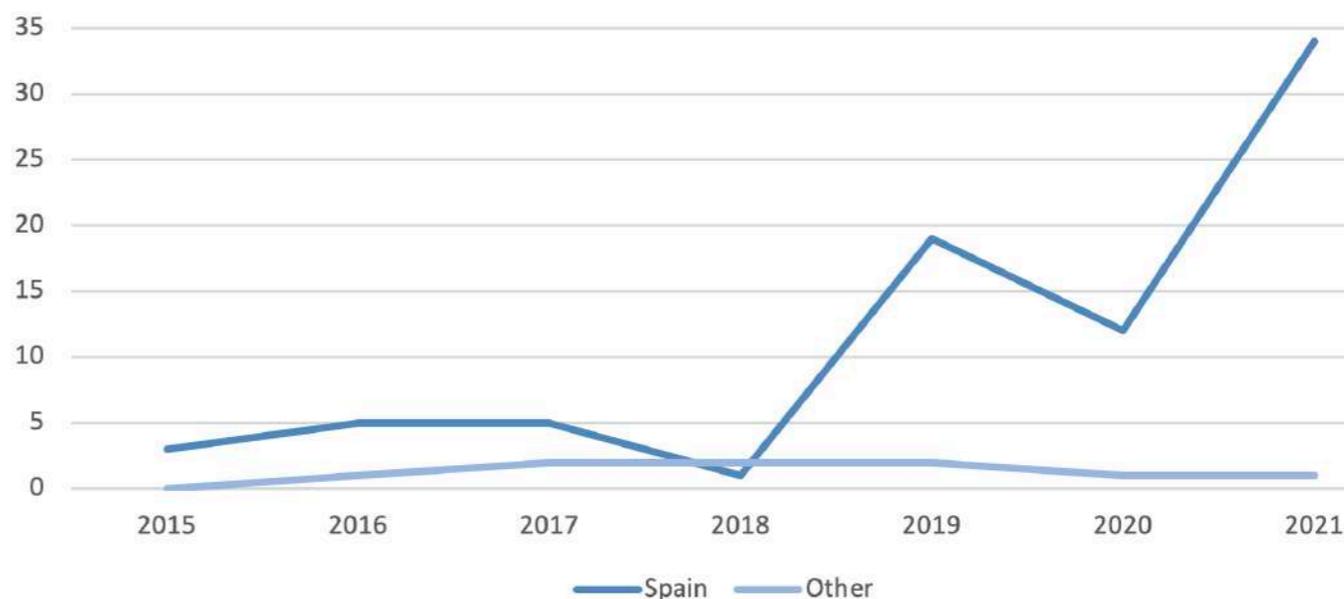
The vast majority of communications continue to be addressed to

Spain: 34 of the 35 Committee decisions in 2021 were addressed to Spain, with one addressed to Belgium. In 2021, the proportion of Spanish decisions was the highest since the first year in which the Optional Protocol was in force. It is now the case that 79 of the Committee's 88 published decisions have been addressed to Spain, an incredible 90% of the total.

Why are so many cases addressed to Spain? Besides from the country's protracted housing crisis and vibrant housing rights movement, it had been thought that the number of communications may be related to a 2018 Spanish Supreme Court ruling which considered UN Treaty Body decisions to be legally binding. However, a later decision of the same court clarified that only European Court of Human Rights decisions will be sufficient for domestic courts to revise a prior domestic judicial decision. Going forward, this will perhaps make the Committee less attractive for Spanish applicants.



Breakdown of total Committee decisions according to respondent State.



CESCR decisions each year by respondent State (Spain / Other).

A steady trickle of communications continue to be addressed to States other than Spain:

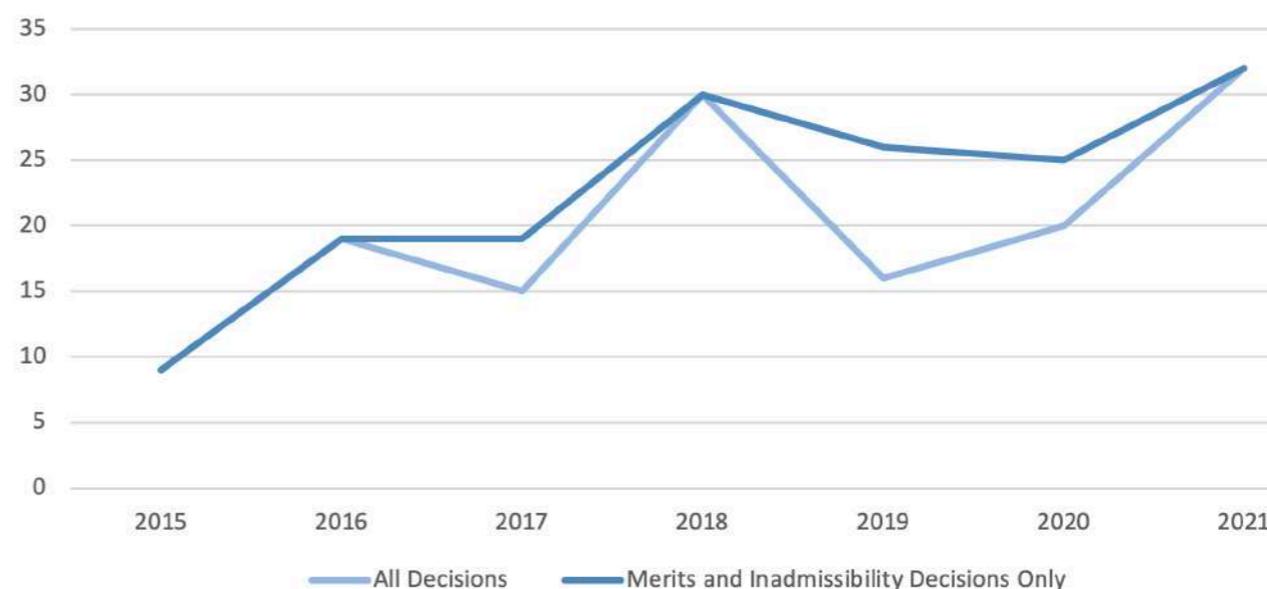
The 2021 communication of Lorne Joseph Walters was the Committee's first decision concerning Belgium. It established a violation in this case, an encouraging result for those interested in making use of the mechanism. Belgium joins Ecuador, Portugal, Italy, Luxembourg and Argentina as the only States other than Spain to which the Committee has addressed a decision.

Whilst communications are currently pending against France, Uruguay, Venezuela and Finland, this is a fraction of the 26 States that have ratified the Optional Protocol. The Committee thus faces the twin task of getting States that have not yet signed the Optional Protocol to do so and getting individuals to bring communications against States that have already ratified it.

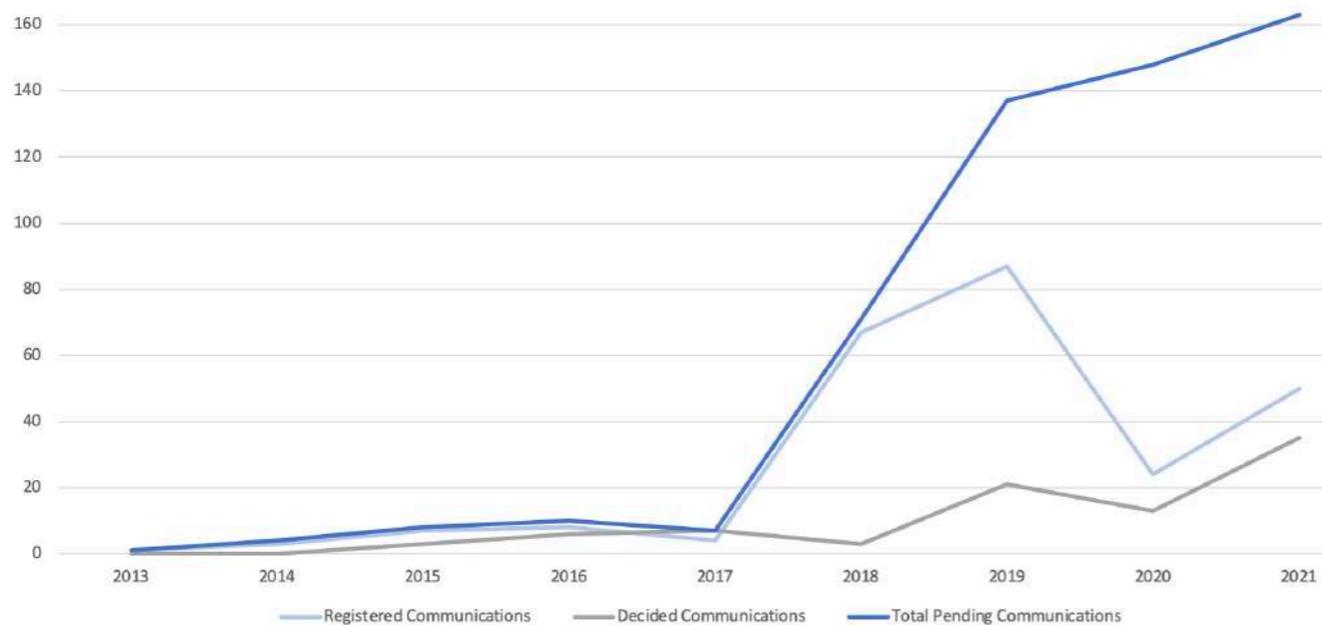
2021 COMMITTEE BACKLOG

Communications are taking slightly longer to decide: The Committee published 2021 decisions an average of 32 months after the communications had initially been registered. The figure remains approximately the same if only merits and inadmissibility decisions are considered (if discontinuance decisions are removed from the calculation).

As can be seen from the graph on the right, these figures are the highest that they have been since the Optional Protocol entered into force, with more months passing between the initial registration of a communication and the Committee’s final decision than did in the early years of the Optional Protocol’s functioning. This is wholly unsurprising, given the sharp growth in the Committee’s caseload. Indeed, given the size of the Committee’s current backlog, we may expect this figure to continue to rise in coming years.



Average months between the date that a communication is registered and the date that a decision is made (approximate).



Number of communications that are registered and decided in a given year, as well as the total number that are pending at the end of each year.

The Committee’s backlog continues to grow: Despite the fact that the Committee made a record number of 35 decisions, it also registered a total of 50 decisions in 2021. As such, its backlog grew by a further 15 communications.

This is the fourth year in a row that the Committee’s backlog has increased. This trend will likely continue if the Committee succeeds in encouraging more States to ratify the Optional Protocol and more individuals to bring communications against those that have already done so. As such, if the Committee does not address the issue, it risks becoming undermined by its own achievements.

** Please note that these figures are intended to show broad trends in the Committee’s backlog and may contain minor inaccuracies.*



Spanish housing cases now account for an incredible 80% of the Committee's total decisions.

El Goumari and Tidli v Spain

Due to non-payment of rent, a Spanish court ordered the eviction of Hakima El Goumari, Ahmed Tidli and their children (two of whom are disabled). Following the eviction, they moved between different overcrowded hostels and hotels offered by Madrid social services. They subsequently rented an apartment of their own, which was unheated and had only one bedroom and a living room for the entire family.

The authors made two claims before the Committee. Firstly, they argued that they were evicted without regard for their lack of alternative accommodation and without consideration of the consequences of the eviction, amounting to a violation of their right to adequate housing (art. 11 (1)). Secondly, they argued that the temporary accommodation they were offered was inadequate and constituted a further violation.

In relation to the first claim, the Committee stressed that the judicial authorities had not

considered the proportionality of the eviction and had not assessed the vulnerability of the authors or their minor children. This "failure to review" amounted to a violation of the right to housing read in conjunction with the State obligation to take steps to the maximum of its available resources to realise right to housing (art.2 (1)).*

In relation to the second claim, the Committee recognised that the temporary accommodation was overcrowded, unsanitary, and left the authors in constant fear of being moved on. Moreover, the rented accommodation they later moved into had only one bedroom for a family of eight and precluded the authors from claiming social allowances. It concluded that the temporary accommodation offered to the authors and their living conditions in the accommodation they later rented amounted to a violation of their right to adequate housing. Accordingly, the Committee made both individual and general recommendations, including that Spain:

- (a) Ensure there is a normative framework which enables persons subject to an eviction order which may violate their Covenant rights to oppose it and have its proportionality examined.
- (b) Ensure eviction orders imposed on people who cannot relocate are carried out only after genuine consultation and action to ensure they are rehoused, particularly when vulnerable persons are involved.
- (c) Ensure that temporary accommodation that is offered meets standards of dignity and safety.
- (d) Formulate and implement a plan to guarantee the exercise of the right to adequate housing by low-income people.

** The Committee later recognised that Spain had since passed new legislation which may prevent the recurrence of such a violation.*

El Ayoubi and El Azouan Azouz v Spain

In late 2016, Fátima El Ayoubi, Mohamed El Azouan Azouz and their disabled son moved into an apartment which was owned by a bank but had been unoccupied for a number of years. The bank sought to have them evicted and the family were subsequently ordered by a Spanish court to vacate the apartment.

After several attempts to stay the eviction, Mr. El Azouan Azouz and Ms. El Ayoubi filed a communication with the Committee. They claimed that the decision to evict them from their home without providing adequate alternative accommodation constituted a violation of their right to housing (art. 11) because no account was taken of their need or their financial situation.

The Committee noted that forced evictions are *prima facie* incompatible with the Covenant and can only be justified in the most exceptional of circumstances. It stressed that domestic authorities ought to conduct a proportionality analysis that considers the availability of suitable alternative accommodation and the personal

circumstances of the occupants and their dependants, an exercise which “inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to banks or other entities”.

The Committee proceeded to recognise that the State had a legitimate interest in protecting the property rights of the bank. However, the domestic court had failed to weigh the benefits of the eviction against its consequences for the rights of the evicted persons, and there was no way for the authors to challenge the eviction order so that an analysis of its proportionality could take place. Due to this absence of a proportionality assessment, the Committee concluded that there had been a violation of the authors’ right to adequate housing, read in conjunction with article 2 (1).*

The Committee continued to make individual and general recommendations. These included that Spain:

- (a) Ensure there is a normative framework which enables persons subject to an eviction order which may violate their Covenant rights to oppose it and have its proportionality examined;
- (b) End the practice of automatically excluding people who occupy property illegally from applying for social housing;
- (c) Ensure eviction orders imposed on people who cannot obtain alternative housing are carried out only after genuine consultation and action to ensure they are rehoused, particularly when vulnerable persons are involved;
- (d) Formulate and implement a plan to guarantee the exercise of the right to adequate housing by low-income people.

* *The Committee acknowledged that Spain had since passed new legislation which may prevent the recurrence of such a violation.*



El Ayoubi and El Azouan Azouz is one of a number of Spanish communications in which the authors had been ordered to vacate a property owned by a financial institution.



Soraya Moreno Romero is the first decision on the right to housing in which the Committee did not find a violation.

Soraya Moreno Romero v Spain

Soraya Moreno Romero lived with her three children at the home of her parents until May 2015. Due to the crowded situation and her lack of financial resources, she moved into a house that belonged to a financial institution. In 2018, she was found guilty of the minor offence of unlawful appropriation, issued with a fine and ordered to leave the house.

Madrid social services subsequently offered Ms. Romero three temporary accommodation options: accommodation shared with another family; accommodation in a reception centre; or assistance to find affordable private accommodation in another neighbourhood.

Ms. Romero rejected these proposals, and, after an initial postponement, was evicted. Social services then offered emergency accommodation for two weeks in a reception centre or hotel. Ms. Romero rejected this offer and opted to live with acquaintances instead.

Turning to the Committee, Ms. Romero claimed that she had been evicted without adequate alternative accommodation being provided and that this amounted to a violation of her right to adequate housing (art. 11). She had also argued that her conviction violated the principle of *non bis in idem* (double jeopardy), although the Committee found this claim inadmissible as it had not been raised before domestic authorities.

The Committee began its examination of the merits of the communication by stressing that where there is a risk that an eviction might affect the right to housing, authorities must ensure it accords with legislation compatible with the Covenant and respects the principle of proportionality. It added that State Parties have an obligation to provide alternative housing to those in situations of necessity, although if they can demonstrate the impossibility of providing permanent alternative accommodation, they may grant temporary emergency accommodation.

The Committee noted that Ms. Romero's conviction for unlawful appropriation was a legitimate reason for her eviction. It also recognised that the domestic authorities had "examined all of the author's complaints concerning her right to housing and assessed the proportionality of the eviction order."

All the proposals offered to Ms. Romero had been rejected and there was no indication that she had contacted social services for further information. Moreover, she had not demonstrated that "the temporary accommodation proposals would be incompatible with human dignity, dangerous or otherwise unacceptable".

The Committee pointed out that there was no indication that Spain had "failed to take all necessary steps to the maximum of its available resources to protect the author's rights" and concluded that the information before it did not disclose a violation of the right to housing.

Lorne Joseph Walters v Belgium

Lorne Joseph Walters was 72 when he was evicted from the apartment that he had lived in for the past 25 years. His landlord had terminated his lease without cause, adhering to domestic legislation as she did so. The Belgian authorities offered Mr Walters alternative housing in the form of transitional supported accommodation and place in a home for older persons, yet he did not consider either to be suited to his needs and moved in with acquaintances instead. His landlord proceeded to place the apartment back on the market at a higher rate.

Mr Walters submitted a communication to the Committee arguing that his right to housing had been violated by the lack of consideration the authorities had given to the consequences of his eviction, as well as the fact the State had allowed his landlord to break the lease without cause.

In its decision, the Committee examined the Belgian legislation that allowed for the termination of leases without cause. As the legislation included safeguards for tenants –

namely requirements of notice and compensation – it found it to be compatible with the Covenant in the abstract. However, the Committee recognised that, in the context of rising rents, the inflexible application of the law could disproportionately impact older persons. It stressed that any State Party with this legal framework had a double obligation to both monitor the impact of the legislation on vulnerable groups and ensure flexibility in its application.

In relation to Mr Walters, neither the judicial authorities nor social services had considered the impact that a forced change of accommodation could have on an older person living in precarious economic circumstances. Moreover, the Committee considered that his request for accommodation that would not remove him from his social network was not unreasonable, especially given that Belgium is “among the countries with the highest per capita income in the world”. In light of his specific needs as an older person, it found that the housing options offered to Mr Walters were not adequate.

Accordingly, the Committee concluded that the eviction procedure and the rigid application of the legal framework on leases constituted a violation of Mr Walters right to adequate housing (art. 11), read alone and in conjunction with his right to non-discrimination (art 2 (2)). Alongside a series of individual recommendations, it stated that Belgium had an obligation to:

- (a) Review legislation allowing the termination of leases without cause so as to introduce flexibility and special measures that would avoid disproportionate impacts on disadvantaged groups.
- (b) Regularly evaluate legislation that allows for the termination of leases without cause so as to assess its impact on the right to housing and make adjustments necessary to protect this right.
- (c) Take measures to ensure that disadvantaged groups who are evicted can access alternative accommodation which meets their needs



Lorne Joseph Walters is a good example of the way the Committee may use its housing caseload to address other rights, here the rights of older persons to non-discrimination.

2021 INADMISSIBILITY DECISIONS

Asmae Taghzouti Ezoquihel

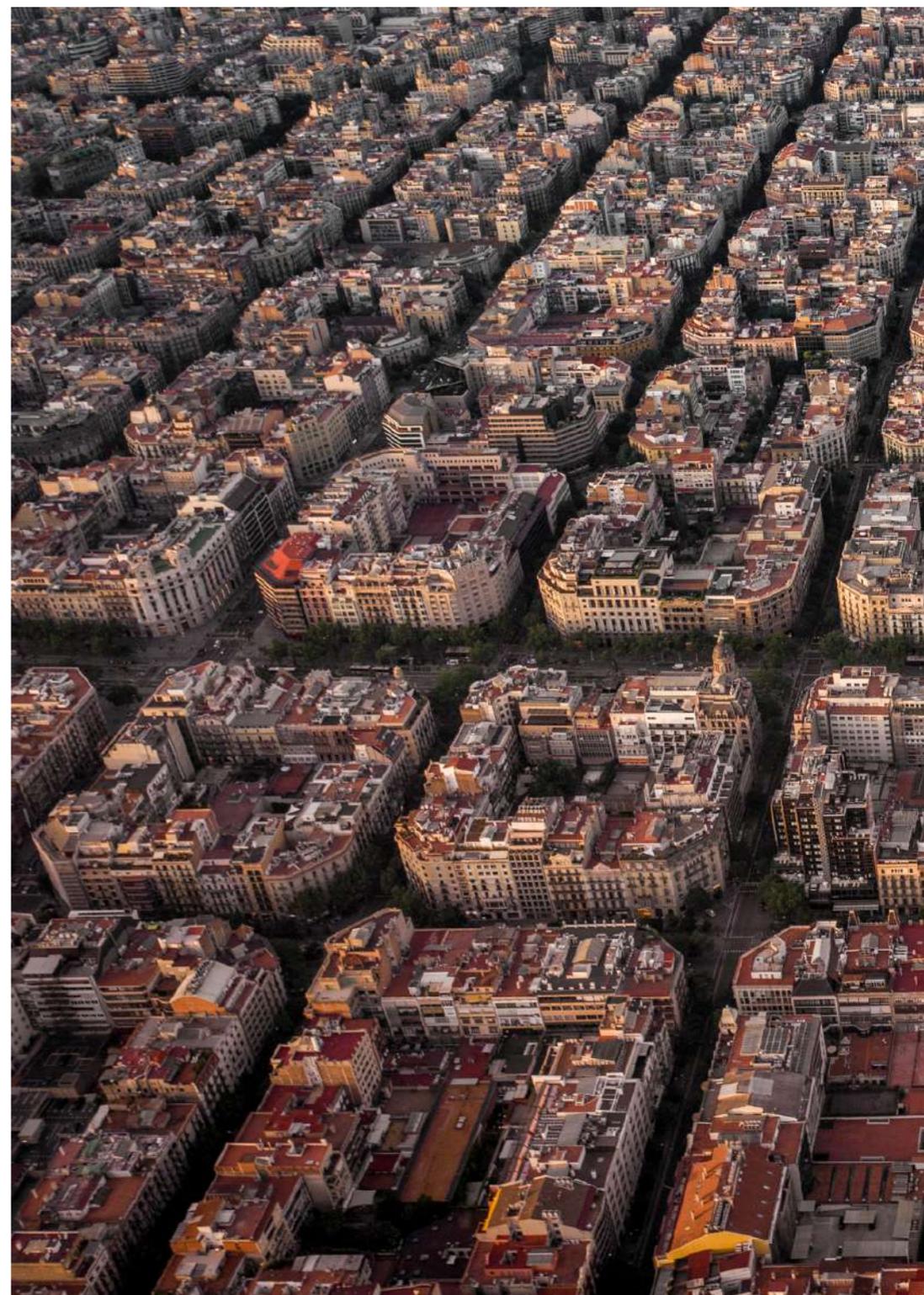
Asmae Taghzouti Ezoquihel began occupying a house owned by a bank in 2014. A Spanish court subsequently issued an order for her eviction on the grounds of illegal occupation. Ms Ezoquihel submitted a communication to the Committee and claimed that the eviction of herself and her two children would violate their right to housing as they did not have access to adequate alternative accommodation.

The Committee began its examination of the communication by rejecting the State's argument that the author's lack of due diligence in applying for social housing entailed that she had abused her right to submit a communication (art 3 (2) (f) Optional Protocol). However, it stated that due diligence is an important element in substantiating a claim that a State had failed to comply with its obligations. In this case, Ms Ezoquihel provided no justification for the fact she failed to apply for emergency housing until three years after her eviction was ordered. As such, the Committee concluded that she had not sufficiently substantiated her claim and declared the communication inadmissible under article 3 (2) (e) of the Optional Protocol.

Gladis Patricia Loor Chila

Gladis Patricia Loor Chila began occupying a property without legal title. The fund that owned the property subsequently initiated eviction proceedings and she was ordered to vacate the property. Ms Loor Chila turned to the Committee and claimed that her eviction would violate her right to housing, as well as the rights of her grandchildren.

The Committee noted that the author had not explained why she had submitted information on her income that was different to that provided by the State. As such, it considered that she had not done enough to evidence her situation of need arising from a lack of income to access private housing. Further, the Committee noted that the author had not provided information on where she had been living since the eviction or how her living conditions impaired her access to adequate housing. As such, it concluded that it did not have enough evidence to consider the author's claims and declared the communication to be insufficiently substantiated for the purposes of admissibility (art. 3 (2) (e) Optional Protocol).



Asmae Taghzouti Ezoquihel lived with her two children in the autonomous Community of Catalonia.



Surveys estimate that there are around 23,000 - 35,000 people in Spain who are homeless.

Rodríguez & Dincă v Spain

Ángela Sariego Rodríguez and Ionut-Cosmin Dincă stopped paying rent shortly after they had moved into a property. A court subsequently ordered them to vacate the property.

The authors turned to the Committee and claimed that their eviction would violate their right to adequate housing as they did not have access to appropriate alternative accommodation. They added that they had tried unsuccessfully to rent on the private market and that accommodation that had been offered in a hostel was not acceptable as it did not meet minimum requirements of stability and security of tenure.

In its decision, the Committee stated that “any lack of due diligence in requesting assistance from the domestic administrative authorities” would be an important factor in determining whether an author has exhausted domestic remedies. It would also be relevant for determining whether an author has substantiated their claim that a State Party has failed to comply with its obligations.

The Committee proceeded to note that the authors claims concerning alternative accommodation contradicted information that was contained in reports by social services. These reports indicated that the authors had decided to pull out of an agreement to rent a property, that they had received offers of financial assistance to rent private-sector housing, and that the hostel was only offered as a temporary alternative of last resort. Moreover, when commenting on the State’s arguments the authors did not provide information on their housing situation or their public housing application.

The Committee concluded that it did not have sufficient evidence to find that the authors had acted with due diligence in exhausting domestic remedies, that their right to adequate housing had been violated, or that a potential violation could be attributed to Spain.

Accordingly, it declared the communication inadmissible under both article 3 (1) and article (2) (e) of the Optional Protocol.

2021 DISCONTINUANCE DECISIONS

Discontinuance Decisions

The Committee made more discontinuance decisions than it ever has done in a single year. Spain was the respondent State in each of these decisions, all of which concerned an alleged violation of the right to housing. The Committee's decisions reflect a variety of different outcomes.

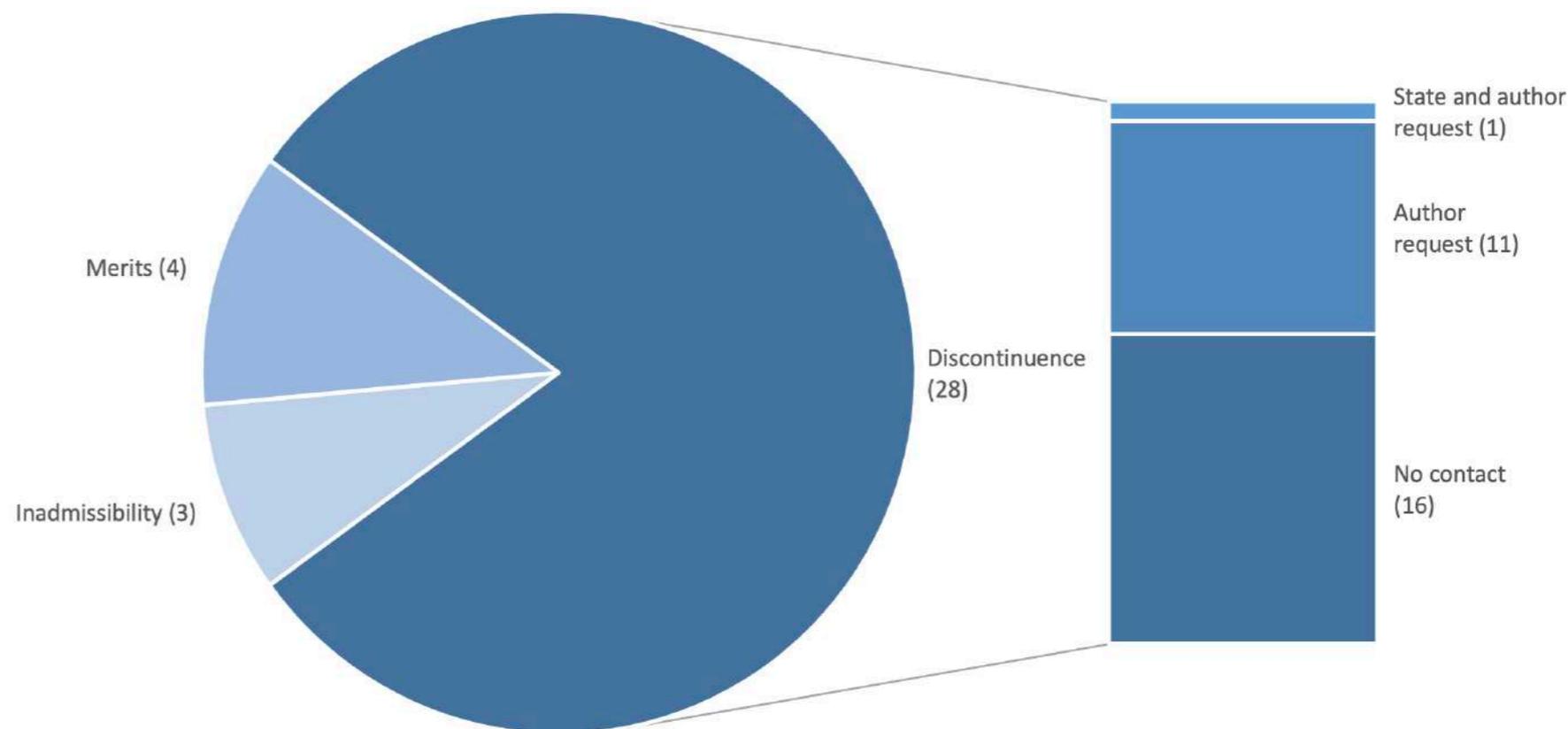
In the majority of these decisions (16 of a total 28) the Committee took the decision to halt the communication after they had been unable to establish contact with the claimant. For example, in the communication M.G. and R.V. v Spain the Committee noted that the authors had "not responded to its repeated requests for comments" and concluded that they "had lost interest in the communication".

A large proportion of the Committee's discontinuance decisions followed a request from the author themselves (eleven of 28). This often indicates that even in the absence of a final Committee decision, a positive outcome has been achieved.

Indeed, 2021 discontinuance decisions refer to various situations in which authors and their children have found alternative housing with assistance from local associations and the community (G. L. v Spain), secured social housing (P.E. v Spain), or been granted social assistance to remain in housing that they occupied (e.g. H.M. & F.J.H.H. v Spain).

The sole communication that was discontinued at the request of both the authors and the State also appears to have resulted in a positive outcome, with the authors and their children finding a home on the private market with the assistance of a Social Inclusion Income scheme (A.M.F. & J.A.M.F. v Spain). It is not the case that all decisions that follow an author request represent a purely positive outcome, however, especially given that such requests may come after an eviction.

Finally, it may be noted that interim measures were requested in each of the communications that were subsequently discontinued. This request was granted in all but one of the 28 decisions (S.S.G. et al v Spain). This raises the possibility that the Committee may contribute to positive outcomes without rendering a decision on the admissibility or merits of a complaint.



2021 discontinuance decisions according to type.



The Committee determined that Italy had not yet implemented any of the recommendations it had made in S.C. and G.P.

Follow Up

2021 saw the Committee release its third report on its follow-up activities under the Optional Protocol. The report contained an update on the implementation of three previous decisions:

- Ben Djazia et al v Spain;
- López Albán et al v Spain; and
- S.C. and G.P. v Italy.

S.C. and G.P. v. Italy

In its 2019 decision of S.C. and G.P. v. Italy the Committee established that a prohibition on the revocation of a women's consent to have an embryo transferred into her uterus amounted to a violation of her right to health (art. 12, read alone and in conjunction with art. 3).

The Committee proceeded to make a number of recommendations in respect of the authors, including that they be reimbursed legal costs and be awarded compensation for the physical, psychological and moral damages suffered.

It also made two general recommendations, namely that Italy a) adopt measures to guarantee the right of all women to take free decisions regarding medical interventions affecting their bodies and b) adopt measures to guarantee access to all reproductive treatments generally available and to allow all persons to withdraw their consent to the transfer of embryos for procreation.

The Committee adopted its first follow-up report on this communication in 2020. It found that the recommendations had "not yet been implemented" and continued the follow up procedure.

The situation had clearly not advanced by the time of the Committee's second follow-up report in 2021. The Committee determined that Italy had "not taken any new concrete measures that would indicate that it has put into effect any of [its] recommendations". It added that the State response was "not satisfactory" and continued the follow-up procedure.

Ben Djazia et al v Spain

In its 2017 decision of *Ben Djazia et al v Spain* the Committee found that the eviction of a couple and their minor children without a guarantee of alternative housing amounted to a violation of their right to housing under article 11 (1) of the Covenant, read both individually and in conjunction with articles 2 (1) and 10 (1).

The Committee proceeded to make three recommendations in respect of the authors, namely that Spain: i) enable the authors to access adequate accommodation if they do not yet enjoy it; ii) award them compensation; and iii) reimburse their legal costs. It also made four general recommendations and found that Spain was under an obligation:

- a) to take measures to ensure that defendants contesting an eviction can challenge its compatibility with the Covenant;
- b) to take measures to resolve a lack of coordination between court decisions and social services, which can result in evicted persons being left without adequate accommodation;
- c) to take measures to ensure that evictions involving those who cannot obtain alternative housing are carried out only after genuine consultation and action to the maximum of available resources to ensure they have alternative housing; and
- d) to develop a plan to guarantee the right to adequate housing for low-income persons.

The Committee published its first follow-up report on this communication in 2019. It noted that the authors had adequate accommodation but had yet to receive compensation or the reimbursement of their legal costs. In relation to its general recommendations it noted that “initial action” had been taken, such as the adoption of a Decree and the establishment as “good practice” that a mechanism for communication between municipal councils and courts should be created. However, it considered that further action and additional information would be required.

There appears to have been little change by the time of the publication of the second follow-up report in 2021. The Committee repeated that “no satisfactory action” had been taken with respect to compensation and the reimbursement of legal costs, noting Spain’s “disagreement” with these recommendations.

In relation to its general recommendations, the Committee noted that several recent Decree-Laws had opened up avenues for dialogue between authorities and for fuller consideration of socio-economic vulnerability in evictions. It considered that these could contribute to compliance with general recommendations a) and b). Support for the state housing plan and an initiative for the adoption of a housing law were viewed as potentially contributing to recommendations c) and d). However, the Committee declined to end the follow-up process as further action and information was still needed.



Mohamed Ben Djazia, Naouel Bellili and their children had been evicted into homelessness.



Ms Albán and her six children were evicted after renting from a person who did not own the flat.

López Albán et al v Spain

In its 2019 decision of López Albán et al v Spain the Committee had determined that the eviction of a mother and her children for occupation without legal title amounted to a violation of their right to housing as they had not been offered appropriate alternative accommodation.

Accordingly, the Committee had made series of recommendations in respect of the author and her children, finding Spain to be under an obligation: a) if they remain without adequate housing, to reassess the priority of their housing application with a view to enabling them to enjoy adequate housing; b) to provide them with compensation; and c) to reimburse their legal costs. It also made six general recommendations, namely that Spain:

- a) establish a legal framework that requires judicial authorities to analyse the proportionality of evictions;
- b) ensure that persons subject to an eviction order can challenge a decision so as to have its proportionality assessed by judicial authorities;
- c) end the practice of automatically excluding individuals who occupy property without legal title from applying for social housing;
- d) take measures to ensure that the eviction of persons who cannot obtain alternative housing takes place only following consultation and once the State has taken steps to ensure they have alternative housing;

- e) develop and implement a plan to guarantee the exercise of the right to adequate housing by low-income persons and;
- f) establish a protocol for complying with requests for interim measures issued by the Committee.

The Committee released its first follow up report in 2021. It noted that the State “disagrees” that it should compensate the author and reimburse her legal costs. Moreover, it noted that the author and her children were still on the waiting list for housing. This was “not indicative of a satisfactory implementation”.

The Committee acknowledged that there was an initiative for a new housing law, that Spain had implemented several recent Decree-Laws, and that it had provided support for a state housing plan. It considered that these measures may contribute to compliance with several of its general recommendations. However, the Committee also noted that Spain had not reported any progress with regard to recommendations c) and f). It appeared particularly concerned about the existence of a State Legal Service document which had stated that requests for interim measures were not binding.

The Committee concluded by recognising that Spain had taken “some initial action” to implement its recommendations. However, it made clear that further action and additional information would be necessary. It thus continued the follow-up procedure.

Thematic work in 2021

STATEMENTS

Statement on universal vaccination against COVID-19, international cooperation and intellectual property

In March 2021 the Committee published a statement on “universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property”. The Statement specifies how Covenant obligations apply to issues of vaccine access and affordability, focusing on international cooperation and intellectual property (IP).

The Statement was released as the growing number of deaths from coronavirus fuelled concern about global inequalities in vaccine access. It was the Committee’s third statement addressing the impact of the pandemic, following previous Statements on “coronavirus and ESC rights” (April 2020) and “universal and equitable access to vaccines” (November 2020). The 2021

Statement builds on these previous Statements by making clear that access to a COVID-19 vaccine is an essential component of both the right to health (art.12) and the right to enjoy the benefits of scientific progress (art. 15).

The obligation of States to take measures to the maximum of available resources to guarantee all people access to vaccines has an unavoidable international dimension, given that many states do not produce vaccines themselves. The Committee emphasised that States thus have a duty to cooperate internationally so as to ensure that vaccines could be accessed, including by using their votes in international organisations. It condemned vaccine nationalism and urged States to strengthen the COVAX facility.

The Committee noted that COVAX will not solve the problem of insufficient production of vaccines, however, and thus turned its attention to IP restrictions. It recalled that IP rights are not human rights, that States have a duty to prevent them from undermining ESC rights, and that businesses have responsibilities not to invoke them in a manner inconsistent with the right of every person to access a vaccine.

The Committee recognised that the Agreement on Trade-Related Aspects of Intellectual Property Rights hinders the international cooperation necessary to scale up vaccine production and distribution. It concluded that it “strongly recommends” that States support the proposal to waive certain provisions within the agreement.



An outdoor vaccination site in Uganda. As of April 2022, only 14.5% of those in low-income countries had received one dose of the vaccine.

GENERAL COMMENTS UNDER PREPARATION



The Committee has been working on its General Comment on Land and ESC Rights for several years.

General Comments

Whilst the Committee did not finalise any new General Comments in 2021, it advanced its development of a General Comment on “Land and ESC Rights” and a General Comment on “Sustainable Development”.

Land & ESC Rights

The Committee has been working on its General Comment on Land & ESC Rights for a number of years. It held a General Discussion Day in 2019, before publishing its first draft of the Comment in mid-2021.

The draft General Comment begins by setting out the relationship between land and Covenant rights. It then details land-related obligations of States, covering those related to non-discrimination, equality, participation, consultation and transparency, as well as

obligations to respect, protect and fulfil, and extraterritorial obligations. The General Comment also provides guidance on a number of specific land related issues, including armed conflict and post-conflict situations, assessment and monitoring measures, corruption, peasants’ rights, human rights defenders and climate change. The final section addresses remedies.

The first draft of the General Comment was commented on by over 100 interested parties. It is now in the process of being amended and is expected to be revised and discussed in 2022.

Sustainable Development

The Committee is at a relatively early stage in the development of its General Comment on Sustainable Development and the ICESCR. It currently plans to explore ten key themes:

- Natural resources

- Environmental degradation & biodiversity loss
- Climate change, sustainable development & ESC rights
- Gender equality
- Leave no-one behind: disadvantaged and marginalised groups and intersectionality
- Indigenous peoples, peasants and other people working in rural areas
- Private actors and sustainable development
- International co-operation, extra-territorial obligations and transboundary impacts
- Remedies and accountability
- The interrelationship between sustainable development & key concepts in the Covenant

As part of its preparations, the Committee is holding a series of consultations across 2021 and 2022. This includes consultations with children, the generation that stands to be most affected by climate breakdown. Following these consultations the Committee will hold a General Discussion Day and publish a first draft of the Comment.

Working methods and procedural information

The predictable review cycle and simplified reporting procedure

In 2015 the Committee opted to make the simplified reporting procedure (SRP) available to a limited number of State Parties on a pilot basis. In 2020 it decided that it would introduce a predictable review cycle, whereby all 171 State Parties would be reviewed in accordance with a set eight-year calendar, regardless of whether they choose to engage with the process. It also decided that it would endeavour to extend the SRP to all States that wished to make use of it. In reaching these decisions, the Committee was guided by the discussions concerning the 2021 review of the treaty body system.

The Committee had initially hoped to introduce the predictable review cycle and extend the SRP from 2022. However, due to resource constraints,

this has not proved possible. As can be seen on page 13 of the Yearbook, the Committee is already struggling to cope with a backlog and this would be aggravated further if all 171 State Parties were to be reviewed each cycle. Subject to resources, the Committee hopes that it will be able to introduce a third session, operationalise the predictable review calendar, and offer the SRP to all parties in the near future.

Revised Rules of Procedure under the Optional Protocol

The Committee published draft "Revised Rules of Procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights" in 2021. The draft proposed a number of changes, including strengthening the Working Group on individual communications and introducing a Pilot Views mechanism, which

would allow it to resolve "Pilot communications" which are representative of structural problems that have generated many similar applications. Whilst the Working Group was strengthened, the Pilot Views mechanism was removed from the final draft of the Rules (adopted in 2022).

Coordination with Treaty Bodies

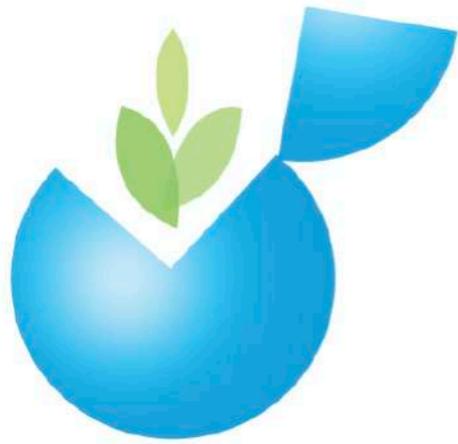
The Committee continued to have regular interactions with other UN Human Rights Treaty Bodies. For example, it participated in a Working Group on the impact of the Covid-19 pandemic with representatives of other Treaty Bodies.

Annual civil society meeting

Committee members held a meeting with representatives of civil society organisations in March, in which updates and views on the work of the Committee were shared.



The United Nations Office in Geneva, Switzerland.



The Global Initiative for Economic, Social and Cultural Rights

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) works to transform power relations and enable every person and community to enjoy their economic, social and cultural rights and all other human rights now and in the future.

In addition to the annual Yearbook on the Committee for Economic, Social and Cultural Rights, GI-ESCR also provides regular updates from Geneva on significant developments that relate to the field of economic, social and cultural rights.

This includes updates from each session of the Committee for Economic, Social and Cultural Rights, as well as each session of the Human Rights Council. You can subscribe to the updates here.

On GI-ESCR's CESCR Jurisprudence webpage page you can find a summary of each of the communications that the Committee has decided, a database with statistics on all of the Committee's decisions, and analysis of the most significant trends that have emerged from the Committee's jurisprudence.

GI-ESCR also hosts an Individual Communication Guide, which includes a step-by-step explanation of the different stages of the individual communication process and a collection of resources where additional information may be found.

For further information about our work, please consult our website at www.gi-escr.org. You can also contact GI-ESCR via our website or at info@gi-escr.org.



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