



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with regard to communication No. 5/2015\*

<i>Submitted by:</i>	Mohamed Ben Djazia and Naouel Bellili (represented by counsel Javier Rubio)
<i>Alleged victims:</i>	The authors and their two minor children
<i>State party:</i>	Spain
<i>Date of communication:</i>	20 February 2015
<i>Date of adoption of Views:</i>	20 June 2017
<i>Subject matter:</i>	Eviction of lessees as a result of judicial proceedings initiated by the lessor
<i>Procedural issues:</i>	Abuse of the right to submit communications; failure to sufficiently substantiate allegations; communication not revealing a clear disadvantage
<i>Substantive issues:</i>	Measures to achieve the full realization of the rights of the Covenant; the right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	3 (e) and (f); and 4

1.1 The authors of the communication are Mohamed Ben Djazia, a Spanish national, and Naouel Bellili, an Algerian national, born on 25 April 1959 and 17 January 1984, respectively. The authors submitted the communication on their own behalf and on behalf of their minor children, both of Spanish nationality, born on 6 May 2010 and 13 September 2012. The authors claim to be victims of a violation by the State party of their rights under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The authors are represented by counsel.

1.2 In the present Views, the Committee first summarizes the information and the arguments submitted by the parties and third parties (paras. 2.1–10), without reflecting the position of the Committee. It then considers the admissibility and merits raised in the communication and, lastly, draws its conclusions and issues recommendations.

\* Adopted by the Committee at its sixty-first session (29 May–23 June 2017).



## A. Summary of the information and arguments submitted by the parties

### The facts as submitted by the authors

2.1 The authors allege that Mohamed Ben Djazia moved into a rented room in an apartment in Madrid on 15 July 1998. In 2009, the authors married and Ms. Bellili moved into the room, where she and Mr. Ben Djazia continued to live after the birth of their two children. The authors paid the monthly rent in a timely manner.

2.2 In 1999, owing to his low income, Mr. Ben Djazia submitted an application for public housing to the Madrid Housing Institute. Between 1999 and 2011, Mr. Ben Djazia submitted 13 such applications, all of which ultimately proved unsuccessful.<sup>1</sup>

2.3 Mr. Ben Djazia received a monthly unemployment benefit until 21 June 2012.<sup>2</sup> During the following months, they were unable to pay Ms. B.P.C. (the lessor) the rent because they lacked a family income.

2.4 In March 2012 and on 10 July 2012, Ms. B.P.C. informed Mr. Ben Djazia that she would not extend the rental agreement. On 31 August 2012, the term of the last rental contract expired, but the authors refused to leave the room as they had no income or alternative accommodation.

2.5 The authors claim that, from May 2012 onwards, they stepped up their search for housing by appealing to public bodies and charitable institutions such as Caritas,<sup>3</sup> without success.

2.6 On 19 November 2012, at the Madrid Court of First Instance No. 37, the lessor brought a civil proceeding for forced eviction on the ground that the contractually established term had elapsed. On 18 December 2012, Mr. Ben Djazia appeared before Court No. 37 and applied for legal aid. On 26 April 2013, the Legal Aid Commission refused to grant legal aid on the ground that Mr. Ben Djazia's claim was untenable.

2.7 On 8 March 2013, Mr. Ben Djazia requested the minimum income allowance from the Community of Madrid.

2.8 On 30 May 2013, Court No. 37 declared that the rental contract had been terminated because the term of the contract had expired and ordered the authors' eviction on 9 July 2013, in accordance with articles 440 (4) and 549 (3) of the Civil Proceedings Act. In its decision, the Court took note of Mr. Ben Djazia's claims regarding his family and financial circumstances and, under articles 158 of the Civil Code and articles 2 and 3 of Organic Act No. 1/1996 of 15 January on the Legal Protection of Minors, it instructed that the Department of Social Affairs of the Community of Madrid and the Government Agency for Family and Social Services of Madrid City Council should be requested to adopt the measures within their competence to protect Mr. Ben Djazia against situations of distress and exclusion and, in particular, to inform the Court, within 20 days, of the specific measures to be taken.

2.9 On 4 June 2013, Mr. Ben Djazia sent a new application for social housing to the Madrid Housing Institute, attaching the decision of Court No. 37 handed down on 30 May 2013, and his request to be granted the minimum income allowance by the Social Services. At the authors' request, on 20 June 2013, Court No. 37 decided to postpone the repossession by one month.

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<sup>1</sup> The authors provide a copy of a record issued by the Community of Madrid on 6 September 2013, which indicates that Mr. Ben Djazia requested public housing in the following calls for applications: 0001/1999, 000/2001, 000/2002, 019/2004, 01/2005, 02/2006, 3/2007, 019/2007, 74/2008, 74/2009, 03/2010, 04/2010, 74/2010 and 74/2011, the first 13 of which were unsuccessful. The document indicates that the last request is still pending.

<sup>2</sup> The authors provide a copy of the employment record issued by the Ministry of Employment and Social Security, dated 14 March 2013, which indicates that Mr. Ben Djazia received unemployment benefits from 22 June 2010 to 21 April 2011; and from 24 March 2012 to 21 June 2012.

<sup>3</sup> The authors provide a copy of a document issued by Caritas-Madrid, dated 28 May 2013.

2.10 On 2 July 2013, Court No. 37 ruled that the lessor's application requesting the execution of the decision of 30 May 2013 complied with legal requirements. Furthermore, it instructed that the authors and their children should be removed from the rented room on 11 September 2013 and that the Department of Social Affairs should be informed of this decision.

2.11 On 19 July 2013, Mr. Ben Djazia lodged an application before Court No. 37 to oppose enforcement of the same Court's decision of 2 July 2013 and requested a suspension of the eviction order. He claimed, *inter alia*, that his eviction would amount to a violation of his right to decent and adequate housing and requested that Court No. 37 resend the communications to the Social Services of the Community of Madrid and Madrid City Council and order the Madrid Housing Institute and Municipal Housing and Land Company to provide him with alternative housing, in response to the applications that he had submitted over the course of more than 10 years.

2.12 On 22 July 2013, Court No. 37 denied the application to oppose enforcement of its earlier decision, as it was not based on any of the grounds set out in article 556 (1) of the Civil Procedure Act. On 26 July 2013, Mr. Ben Djazia filed an application for reconsideration with annulment of proceedings before Court No. 37, reiterating his claims and requesting that the relevant circumstances in his case and the risk to which his family would be exposed if they were evicted without alternative housing should be taken into account. Finally, he requested that Court No. 37 resend the communications to the Social Services of the Community of Madrid and Madrid City Council, the Madrid Housing Institute and the Municipal Housing and Land Company.

2.13 On 29 August 2013, Mr. Ben Djazia went to a Madrid City Council social services centre in the district of Tetuán. A social worker informed him in writing that Social Services could grant him financial assistance of one month in a rented room, payment of which was sustainable on his income and which he undertook to maintain, and that in the event that the minors were left homeless and the family did not have any alternative, Social Services would consider initiating protection measures to avoid a situation of distress.<sup>4</sup>

2.14 On 6 September 2013, Court No. 37 rejected the application lodged by Mr. Ben Djazia on 26 July 2013.

2.15 On 10 September 2013, Mr. Ben Djazia submitted an application for *amparo* to the Constitutional Court and a request for interim measures to suspend the eviction.

2.16 On 11 September 2013, the eviction was postponed until 3 October 2013 owing to opposition by some neighbours and members of social organizations.

2.17 On 20 September 2013, Mr. Ben Djazia reiterated his request for interim measures to the Constitutional Court.

2.18 On 30 September 2013, Mr. Ben Djazia sought interim measures before the European Court of Human Rights. The authors maintain that the Court rejected this application and that they did not submit any subsequent claims to it.

2.19 On 3 October 2013, the authors and their children were evicted, with the assistance of the municipal police. In the course of the eviction, Mr. Ben Djazia unsuccessfully requested an out-of-court agreement with the lessor so that the family could stay in the room in return for payment, since he had begun to receive a minimum income allowance. On the same day, the municipal emergency service (SAMUR) provided temporary shelter to the authors in the short-stay shelter of SAMUR Social-Madrid, where they stayed for 10 days until the authorities invited them to leave. After that, the authors and their children slept in the family car for four days and then moved to the place of an acquaintance, who offered them accommodation for several weeks. The authors point out that at the time of the eviction, they did not have sufficient income to enable them to seek alternative housing.

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<sup>4</sup> The authors provide a copy of the document issued by the Vicente Ferrer social services centre of Madrid City Council, dated 29 August 2013.

2.20 On 19 February 2014, the Constitutional Court decided not to admit Mr. Ben Djazia's application for *amparo* on grounds of the manifest absence of a violation of a fundamental right covered by *amparo*.

### **The complaint**

3.1 The authors argue that the State party violated their right under article 11 (1) of the Covenant, since they were evicted by order of Court No. 37 despite the fact that they did not have alternative accommodation and that the measure affected their minor children, who had the right to special protection.<sup>5</sup> As a result of this measure, the authors and their children faced a situation of uncertainty, extreme insecurity and vulnerability.

3.2 The judicial proceedings that concluded with the eviction of the authors did not observe judicial guarantees since Spanish law does not properly guarantee the right to housing in the context of judicial proceedings relating to evictions that result from the termination of rental contracts. Courts do not evaluate the impact of forced evictions on lessees or the particular circumstances of each case. Court No. 37 did not take into account that the authors did not have alternative housing or the impact of the eviction order on their two minor children.<sup>6</sup>

3.3 Relief measures for persons on very low incomes or without any income are insufficient to protect the right to adequate housing, as demonstrated by the fact that, for more than 10 years, Mr. Ben Djazia was unsuccessful in his attempts to apply for social housing from the Madrid Housing Institute. Although the Madrid Housing Institute, the Department of Social Affairs and the Government Agency for Family and Social Services of Madrid City Council were informed of the family situation, they did not take any steps to prevent the authors from being left without alternative housing when faced with imminent eviction.

### **State party's observations on admissibility**

4.1 On 22 May 2015, the State party argued that the communication was inadmissible under article 3 (2) (e) and (f) of the Optional Protocol because it is manifestly ill-founded and is an abuse of the right to submit a communication. Furthermore, the communication does not reveal that the authors were at a clear disadvantage within the meaning of article 4 of the Optional Protocol.

4.2 The State party argues that the authors deliberately failed to provide relevant information in order to confuse the Committee, for example when they alleged that they had been the victims of a forced eviction. In fact, their situation was not a forced eviction in the sense of the Committee's general comment No. 7 (1997) on the right to adequate housing (art. 11 (1) of the Covenant): forced evictions (paras. 3, 6 and 7). The authors faced eviction upon the expiration of their private rental contract without any action being taken by the authorities, with the exception of the intervention of the judiciary as a mediator in the absence of an agreement between the lessor and the lessee.

4.3 It is not true that the authorities ignored the authors: beginning in 2002, the authors received ongoing social support from the Madrid City Council social services centre in the district of Tetuán.<sup>7</sup> However, it was Mr. Ben Djazia's attitude which to a large extent hindered any improvement of the family's financial situation, as he assumed that such an improvement was the sole responsibility of the public authorities.

4.4 According to a report by the Directorate General for Housing and Rehabilitation of the Community of Madrid, dated 21 April 2015, since 2006, Mr. Ben Djazia's income had been from allowances, benefits and sporadic work in the informal economy. According to

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<sup>5</sup> In their reasoning, the authors also refer to the Convention on the Rights of the Child, which entered into force for the State party on 5 January 1991.

<sup>6</sup> The authors refer to the Committee's concluding observations on the fifth periodic report of Spain on the implementation of the Covenant (E/C.12/ESP/CO/5), para. 22.

<sup>7</sup> According to the social report of Madrid City Council-Tetuán Municipal Board of 24 April 2015, the centre provided social support for processing Mr. Ben Djazia's income support application and his participation in job-seeking schemes.

the social report of Madrid City Council, in 2006 a social worker noted that Mr. Ben Djazia did not wish to participate in a job-seeking scheme as he did not consider it useful. In 2009, the centre reminded him that it was mandatory to come in for an income support review every six months, noting that in the past two years he had come to the centre only once.<sup>8</sup> In 2012, as in previous years, the centre noted Mr. Ben Djazia's lack of motivation to find employment.

4.5 The State party notes that Mr. Ben Djazia, rather than actively searching for housing, simply expected that it would be provided by Social Services, even when the eviction was imminent. When the lease expired in August 2012, a social worker informed him about public and private entities that could grant public housing. However, Mr. Ben Djazia demanded that the centre provide him with housing. In addition, in July 2012, the centre referred Mr. Ben Djazia to the Caritas solidarity rental scheme, under which he received two financial support payments of €300 each in October 2012. In 2013, Social Services granted Mr. Ben Djazia financial assistance of €600 to cover basic needs, and urged him to continue searching for alternative housing. In February 2013, a social worker at the centre noted that Mr. Ben Djazia had not searched for alternative accommodation, despite the fact that he knew that he had to leave the rented room. Given Mr. Ben Djazia's reluctance to searching for accommodation, in August 2013, the centre contacted him to offer him financial support to pay one month's rent on a room and the deposit on an apartment of no more than €400. He was also informed that in the event that the eviction took place on 11 September and he had no accommodation, protection measures would be taken in respect of the children. In September 2013, Mr. Ben Djazia again began to receive a minimum income allowance of €532.51 per month.

4.6 Of all the public housing applications submitted by Mr. Ben Djazia, only three had included his family, at the suggestion of the centre.<sup>9</sup> The State party notes that every year the Madrid Housing Institute receives an average of 8,000 requests for public housing and allocates an average of 260 housing units in the city of Madrid.

4.7 The authors failed to inform the Committee that SAMUR had told them that if they had not found accommodation by the end of the maximum stay in the SAMUR Social-Madrid short-stay unit, accommodation could be provided for Ms. Bellili and the children in a women's shelter and for Mr. Ben Djazia in a homeless shelter. The Madrid City Council social services centre in Tetuán offered the author a similar option (see 2.13).

#### **Authors' comments on the State party's observations on admissibility**

5.1 On 27 June 2015, the authors submitted their comments on the State party's observations and claimed that the obligations under article 11 of the Covenant extended to situations related to rental housing, including evictions, which can constitute forced eviction if carried out in accordance with legislation that is not compatible with the Covenant, or where the persons affected do not have access to the appropriate legal remedies.<sup>10</sup>

5.2 The State party's observations aim to call into question Mr. Ben Djazia's civic conduct to justify the lack of housing alternatives and reverse the burden of proof, attaching an aura of suspicion to the person who claims to be a victim of a violation of the Covenant. However, Mr. Ben Djazia sought employment and diligently trained for the labour market

<sup>8</sup> According to the social report, Mr. Ben Djazia received a minimum income allowance of €532 from 2013.

<sup>9</sup> The State party provides a copy of a report from the General Directorate of Housing and Rehabilitation of the Community of Madrid dated 21 April 2015, which indicates that Mr. Ben Djazia submitted 16 applications for public housing: 11 under the special necessity quota and 5 to be entered into a draw. The report concludes that Mr. Ben Djazia's application for public housing under the special necessity quota was "admitted" and that on the date of application he was number 432 on the list.

<sup>10</sup> The authors refer to the Committee's general comment No. 7, paras. 11, 16 and 19.

at least as early as 1998.<sup>11</sup> His depressive or negative attitude towards Social Services is attributable to his circumstances as an unemployed person without social benefits and facing serious difficulties in providing food and clothing for his family.

5.3 The municipal social services, as well as other authorities to which the authors appealed, had no genuine interest in their case. The court-appointed lawyer refused to defend the case, claiming that it was untenable, and the Madrid Bar Association denied Mr. Ben Djazia's request to be assigned another lawyer.

5.4 In its submission, the State party refers to an offer by Social Services for Ms. Bellili and the children to be accommodated in a shelter — without Mr. Ben Djazia — which would have led to the separation of the family and even greater psychological effects on the children than the eviction. In any event, the authors argue that having been invited to leave the SAMUR short-stay shelter, as their stay there could not be extended, they were not offered any decent alternative accommodation.

5.5 The State party did not grant Mr. Ben Djazia's applications for social housing as far back as 1999 and in subsequent years it reduced the number of public housing units, despite the fact that it did not have sufficient housing to deal with emergency situations stemming from the severe economic crisis. The authorities in Madrid sold public housing to investment companies, thus reducing the available housing stock. For example, in 2013, the Madrid Housing Institute sold 2,935 houses and other properties to a private entity for €201 million for budget balancing purposes.<sup>12</sup>

#### **State party's observations on the merits**

6.1 On 17 September 2015, the State party submitted its observations on the merits and reiterated its arguments concerning the inadmissibility of the communication.

6.2 The State party notes that after he was notified of the claim, Mr. Ben Djazia was provided with a legal representative and lawyer free of charge. However, the lawyer was of the view that the claim was untenable, an opinion that was confirmed by the Legal Aid Commission. Nonetheless, Mr. Ben Djazia was represented by a lawyer of his own choosing.

6.3 The State party reiterates that the situation is not a forced eviction even if the authors consider it as such. The judicial proceedings before Court No. 37 provided all applicable due process guarantees under the Covenant.<sup>13</sup> Mr. Ben Djazia was informed sufficiently in advance of the termination of the lease, in March 2012. During that time, he had the opportunity to communicate with the Social Services of the Community of Madrid and Madrid City Council. The eviction took place at an appropriate time in the presence of officials of the Court, the police and the representatives of the parties who wished to attend. Mr. Ben Djazia was allowed to appear in proceedings before Court No. 37 and to appeal. He was also able to lodge an *amparo* application before the Constitutional Court and to file a request for interim measures with the European Court of Human Rights.

#### **Authors' comments on the State party's observations on the merits**

7.1 On 22 February 2016, the authors responded to the State party's observations on the merits and reiterated the allegations of a violation of article 11 of the Covenant

7.2 The trial before Court No. 37 did not observe judicial guarantees. The eviction decision did not take into account the possible consequences of this measure for the authors, and in particular for their minor children. The legislation does not provide for the possibility for defendants in judicial eviction proceedings to object or lodge an appeal to

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<sup>11</sup> The authors provide one certificate of employment as an electronic technician, issued by a private company (1993–1996), and seven certificates of attendance at technical courses in 2001, 2004, 2006–2008 and 2015, issued by public and private entities.

<sup>12</sup> The authors refer to a report by Amnesty International, *Evicted Rights: Right to housing and mortgage evictions in Spain*, Madrid, Amnesty International-Spain, 2015, p. 40.

<sup>13</sup> The State party refers to the Committee's general comment No. 7, para. 15.

explain the impact of the eviction; their only option is to claim full or partial payment of the amount of the rent.

7.3 The authors reiterate that the State party has taken retrogressive measures in relation to the public housing stock in the middle of a severe economic crisis.

### **Third-party submissions**

8.1 On 5 April and 25 October 2016, the Working Group on Communications, acting on behalf of the Committee, admitted submissions from the International Network for Economic, Social and Cultural Rights (ESCR-Net)<sup>14</sup> and from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, in accordance with article 8 of the Optional Protocol, rule 14 of the provisional rules of procedure under the Optional Protocol, and the guidance on third-party interventions.

8.2 On 17 May 2015, ESCR-Net transmitted its submission, underscoring that States parties are required to, inter alia, safeguard the right to housing of persons under their jurisdiction, including tenants under private lease agreements, take the necessary steps to realize the right to housing to the maximum of their available resources and guarantee the right to effective remedy. On 19 May 2016, the Committee transmitted this submission to the State party and the authors together with a request for their observations and comments.

8.3 On 31 January 2017, the Special Rapporteur, without taking a position regarding the authors' complaints, stated that the communication raised important questions about: the obligation of the State party to prevent and respond to the lack of housing, including by addressing structural causes; matters of access to justice; protection against the termination of lessor-lessee relations when a lease agreement runs out; and the obligation to adopt positive measures to help tenants who cannot afford rent. On 9 February 2017, the Committee transmitted this submission to the State party and the authors together with a request for their observations and comments.

### **The parties' comments on the third-party submissions**

9. On 19 June 2016, the authors informed the Committee that they supported the considerations set out in the submission of ESCR-Net, which supplemented their claims.

10. On 17 March 2017, the State party submitted its observations on the submission of the Special Rapporteur. The State party listed and briefly described the most meaningful steps taken by its authorities, since the onset of the economic crisis, in favour of vulnerable groups, particularly those for whom it was exceptionally difficult to make mortgage payments.

## **B. Committee's consideration of admissibility**

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol, whether the communication is admissible or inadmissible.

11.2 Based on the information provided by the parties, the Committee notes that, on 30 September 2013, Mr. Ben Djazia submitted an ultimately unsuccessful request for interim measures to the European Court of Human Rights and no subsequent claim was submitted to that court. The Committee further notes that the State party has not submitted objections under article 3 (2) (c) of the Optional Protocol. In any event, the rejection of a request for interim measures by the Court does not necessarily imply that the matter should be considered under the Optional Protocol.

<sup>14</sup> Represented by: Center for Economic and Social Rights; Global Initiative for Economic, Social and Cultural Rights; Ana Lucía Maya Aguirre, professor at Jorge Tadeo Lozano University in Bogota; Social Rights Advocacy Centre; Centro de Estudios Legales y Sociales; Socio and Economic Rights Project; Dullah Omar Institute, South Africa; Amnesty International-United Kingdom; Observatori DESC, Spain; and Jackie Dugard, professor, Wits University, South Africa.

11.3 The Committee notes the State party's argument that the authors' claims are manifestly unfounded under article 3 (2) (e) of the Optional Protocol, as the authors were not subjected to forced eviction but, rather, were evicted because their rental contract with a private individual had expired, and because their situation had received ongoing attention on the part of the authorities. The Committee considers, nevertheless, that the facts put forward in the communication enable it to assess whether or not there was a violation of the Covenant and that the authors have sufficiently substantiated their claims for purposes of admissibility.

11.4 The Committee notes the State party's argument that the communication should be declared inadmissible as an abuse of the right of submission because it contains incomplete or distorted information about the situation of the authors, with the intention of misleading the Committee. The Committee considers, however, that the mere discrepancy between the State party's and the authors' versions of the facts, including the actions of Social Services and the attitude of Mr. Ben Djazia in his search for a job and alternative housing, does not constitute an abuse of the right to submit a communication under article 3 (2) (f) of the Optional Protocol.

11.5 The Committee takes note of the State party's argument that the communication is inadmissible also because it does not indicate that the authors have suffered a clear disadvantage. Under article 4 of the Optional Protocol, the Committee may, if necessary, decline to consider a communication if it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance. A literal and systematic interpretation has led to the conclusion that this provision does not give rise to an admissibility requirement for communications under the Optional Protocol<sup>15</sup> but, rather, gives the Committee the discretionary power not to consider a communication that fails to meet a minimal level of severity if necessary in order to focus its resources on best discharging its functions. This interpretation was confirmed during the development of the Optional Protocol.<sup>16</sup> In exercising its discretionary power, the Committee should take into account, among other factors, its jurisprudence on the various rights under the Covenant and whether the alleged victim was at a clear disadvantage on the basis of the circumstances of the case, especially the nature of the rights allegedly violated, the seriousness of the alleged violations and/or the possible effects of the violation on the alleged victim's personal situation.<sup>17</sup> In the light of these considerations and the facts set forth in the complaint, the Committee does not consider it necessary to decline to consider the communication under article 4 of the Optional Protocol.

11.6 The Committee notes that the communication meets the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communication admissible and proceeds to its consideration on the merits.

## C. Committee's consideration of the merits

### Facts and legal issues

12.1 The Committee has considered the present communication taking into account all the information provided to it in accordance with the provisions of article 8 of the Optional Protocol.

12.2 The authors allege that the State party violated their right to adequate housing given that they were evicted from their rented accommodation by order of Court No. 37, without consideration being given to the fact that they had no alternative housing or to the consequences of the eviction order, in particular for their minor children. They argue that

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<sup>15</sup> See also rule 14 (5) of the Committee's provisional rules of procedure.

<sup>16</sup> See the report of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its fifth session (A/HRC/8/7), paras. 155 and 157.

<sup>17</sup> See, for example, European Court of Human Rights, *Gagliano Giorgi v. Italy*, application No. 23563/07, judgment of 6 March 2012, paras. 54–56; and *Giusti v. Italy*, application No. 13175/03, judgment of 18 October 2011, para. 34.



the judicial proceedings did not provide the necessary judicial guarantees and that the authorities did not grant the family public housing. Moreover, the Community of Madrid sold part of its public housing stock to private investment funds in the middle of a severe economic crisis.

12.3 The State party contends that the authors faced eviction at the initiative of an individual (the lessor), that the judiciary intervened only as a mediator, and that the proceedings before Court No. 37 observed all judicial guarantees. In addition, the State party points out that the Social Services of the Community and City Council of Madrid assisted the authors in different ways (see para 4.5), to the extent of available resources, including grants and other financial support and temporary shelter for 10 days following the eviction, and that it was to a large extent Mr. Ben Djazia's attitude which hindered any improvement of the family's financial situation.

12.4 The facts undisputed by the parties are that the authors and their children lived in a rented room in Madrid and that it was their primary residence; that the legal proceedings initiated by the lessor against Mr. Ben Djazia before Court No. 37 concluded with the eviction of the authors and their children on 3 October 2013; that although Mr. Ben Djazia received unemployment benefits and a minimum income allowance during various periods (see footnotes 2 and 8), at the time of the eviction, the authors did not have alternative housing or sufficient income to seek other rental accommodation; that Mr. Ben Djazia applied, unsuccessfully, to the Madrid Housing Institute for public housing on numerous occasions between 1999 and 2011 (see footnotes 1 and 9); and that in 2012 and 2013 the Madrid Housing Institute, like other institutions of the Community of Madrid, sold 2,935 homes to private companies/investment funds (see footnote 12).

12.5 With regard to the authors' situation after staying in the SAMUR short-stay shelter, the Committee takes note of the State party's argument that SAMUR informed the authors that, if necessary, accommodation could be provided for Ms. Bellili and the children in a women's shelter and for Mr. Ben Djazia in a homeless shelter. However, the authors allege that when they were asked to leave the short-stay shelter, they were not offered any alternative decent accommodation. The Committee notes that the material submitted by both parties in this connection (see footnotes 4 and 7) shows merely that in August 2013 the social services centre of Tetuán informed Mr. Ben Djazia that in the event the family was evicted and had no alternative housing, protection measures would be taken in respect of the children. The Committee also notes that the State party does not contest the authors' allegation that after staying in the short-stay shelter for 10 days, they and their children had to sleep in the family car for 4 days, until an acquaintance provided them with accommodation for several weeks.

12.6 The Committee further notes that the authors do not contest the information contained in the report of the social services centre in Madrid, of 24 April 2015, according to which the centre intervened on behalf of Mr. Ben Djazia, who subsequently received occasional financial support in 2012 and 2013 for the coverage of basic needs (see para. 4.5).

12.7 In the light of the Committee's determination of the relevant facts and of the arguments submitted by the parties, the fundamental issue raised by the communication is whether the authors' eviction from their rental accommodation by order of Court No. 37, on grounds that the contract had ended, and the authorities' failure to grant alternative housing constituted a violation of the right to adequate housing under article 11 (1) of the Covenant, taking into account the fact that the authors were left homeless. In considering this central issue, the Committee will first address the State party's argument that the communication deals with a conflict between individuals that does not fall under the Covenant. The Committee will begin by recalling certain relevant aspects of the right to housing, particularly in relation to persons living in rented accommodation and the legal safeguards of this right.

### The right to housing and legal security of tenure

13.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights<sup>18</sup> and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.<sup>19</sup> The right to housing should be ensured to all persons irrespective of income or access to economic resources,<sup>20</sup> and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.<sup>21</sup>

13.2 All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.<sup>22</sup> This guarantee also applies to persons living in rental accommodation, whether public or private; such persons should enjoy the right to housing even when the lease expires.

13.3 Forced eviction is prima facie incompatible with the requirements of the Covenant and can be justified only in the most exceptional circumstances, and in accordance with the relevant principles of international law.<sup>23</sup> The Committee refers to the definition of forced eviction in its general comment No. 7 (para. 3) and stresses that the definition is not limited to collective or large-scale evictions or those promoted directly by the authorities of the States parties. The protection against forced eviction also applies to persons living in rental accommodation.<sup>24</sup>

13.4 When eviction is justified (see paras. 15.1–15.3), the relevant authorities must ensure that it is carried out in accordance with legislation that is compatible with the Covenant, including the principle of human dignity contained in the preamble, in accordance with the general principles of reasonableness and proportionality. Processes relating to forced eviction or those that may affect the security of tenure and potentially result in an eviction should be carried out in keeping with procedural protections which include, inter alia, an opportunity for genuine consultation with those concerned.<sup>25</sup> The Committee recalls that there cannot be a right without an effective remedy<sup>26</sup> and that, therefore, in accordance with the obligation contained in article 2 (1) of the Covenant, States parties should ensure that persons whose right to adequate housing might be affected as a result, for example, of a forced eviction or the termination of contractual relations relating to rent, have access to effective and appropriate judicial remedies.<sup>27</sup>

### The State's duty to protect tenants

14.1 As argued by the State party, an eviction due to the expiry of the term of a rental contract is a dispute between individuals (lessor and lessee), in which the eviction is not directly initiated by the authorities. However, this type of dispute is governed by the legal order of the State party, which, in any event, bears the ultimate responsibility to ensure that the rights under the Covenant are respected, including the right to housing of lessees. Accordingly, although disputes resulting from the expiry of a rental contract are between two individuals, the State party has an obligation to, inter alia, guarantee that the eviction does not infringe article 11 (1) of the Covenant (see paras. 15.1 and 15.2).

<sup>18</sup> General comment No. 4 (1991), on the right to adequate housing, para. 1.

<sup>19</sup> Ibid., paras. 7 and 9.

<sup>20</sup> Ibid., para. 7.

<sup>21</sup> Ibid., para. 12.

<sup>22</sup> Ibid., para. 8 (a).

<sup>23</sup> Ibid., para. 18, and general comment No. 7, para. 1.

<sup>24</sup> See ESCR-Net submission.

<sup>25</sup> General comment No. 7, para. 15. See also Constitutional Court of South Africa, judgment in *Occupiers of 51 Olivia Road v. City of Johannesburg* [2008] ZACC 1, paras. 9–23. The Supreme Court of India has also underscored the safeguards in cases of eviction: see *Olga Tellis & Ors v. Bombay Municipal Corporation*, *All India Reporter*, 1986, 180.

<sup>26</sup> Communication No. 2/2014, *I.D.G. v. Spain*, Views adopted on 17 June 2015, para. 11.3. See also general comment No. 9 (1998) on the domestic application of the Covenant, para. 2.

<sup>27</sup> General comments No. 3 (1990), on the nature of States parties' obligations, paras. 1 and 5, No. 7, paras. 9, 11 and 15, and No. 9, para. 2; and communication No. 2/2014, *I.D.G v. Spain*, paras. 11.3 and 11.4.

14.2 States parties do not only have the obligation to respect Covenant rights, and, it follows, to refrain from infringing them, but they also have the obligation to protect them by adopting measures to prevent the direct or indirect interference of individuals in the enjoyment of these rights.<sup>28</sup> If a State party does not take appropriate measures to protect a Covenant right, it has a responsibility even when the action that undermined the right in the first place was carried out by an individual or a private entity. Thus, although the Covenant primarily establishes rights and obligations between the State and individuals, the scope of the provisions of the Covenant extends to relations between individuals. An eviction related to a rental contract between individuals can, therefore, involve Covenant rights. Accordingly, the State party's argument that the communication deals with a dispute that is exclusively between individuals and therefore does not fall under the Covenant does not stand.

### **The right to housing for evicted persons and access to public housing**

15.1 In some circumstances, the eviction of people living in rental accommodation may be compatible with the Covenant, as long as the eviction is provided for by law and is carried out as a last resort, and that the persons concerned have had prior access to an effective judicial remedy, in order to ascertain that the measure in question is duly justified, for example, in the case of persistent non-payment of rent or of damage to rented property without just cause. In addition, there must be a real opportunity for genuine prior consultation between the authorities and the persons concerned, there must be no less onerous alternative means or measures available and the persons concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.

15.2 In particular, evictions should not render individuals homeless. Where those affected do not have the means to acquire alternative housing, States parties must take all appropriate measures to ensure, where possible, that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.<sup>29</sup> States parties should pay particular attention to evictions that involve women, children, older persons, persons with disabilities or other vulnerable individuals or groups who are subjected to systemic discrimination. The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by an individual such as the lessor.

15.3 The obligation to provide alternative housing to evicted persons who need it implies that, under article 2 (1) of the Covenant, States parties must take all necessary steps, to the maximum of their available resources, to uphold this right. States parties can choose a variety of policies to achieve this purpose, including the establishment of housing subsidies for those unable to obtain affordable housing.<sup>30</sup> However, any measures adopted must be deliberate, specific and as straightforward as possible to fulfil this right<sup>31</sup> as swiftly and efficiently as possible. Policies on alternative housing in case of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.<sup>32</sup>

15.4 Human rights are indivisible and interdependent. Accordingly, State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to

<sup>28</sup> General comment No. 7, para. 9. See also general comment No. 22 (2016) on the right to sexual and reproductive health, para. 42; and No. 23 (2016) on the right to just and favourable conditions of work, para. 59.

<sup>29</sup> General comment No. 7, para. 16.

<sup>30</sup> General comment No. 4, para. 8 (c). See also paragraph 13.

<sup>31</sup> General comment No. 3, para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

<sup>32</sup> See, for example, the submission in this case of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and her report (A/HRC/31/54, paras. 28–38).

provide the family with the widest possible protection (art. 10 (1) of the Covenant). The obligation of States parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it includes the protection of the family unit, especially when the persons are responsible for the care and education of dependent children.

15.5 In the event that a person is evicted from his or her home without the State granting or guaranteeing alternative accommodation, the State party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned. The information provided by the State party should enable the Committee to consider the reasonableness of the measures taken in accordance with article 8 (4) of the Optional Protocol.<sup>33</sup>

### **The judicial proceedings before Court No. 37**

16.1 The Committee will consider whether the authors' eviction from their rental accommodation constituted a violation of their right to adequate housing. The Committee notes that the lessor notified Mr. Ben Djazia of her plans to terminate and not renew the contract on 15 March and 12 July 2012, in accordance with articles 9 and 10 of the Urban Tenancies Act and article 1569 (1) of the Civil Code, that the lease expired on 31 August 2012 and that the authors nevertheless refused to leave the accommodation. In response to a complaint by the lessor, on 30 May 2013, Court No. 37 ordered the authors' eviction on the ground that the term of the contract had expired, in accordance with articles 440 (4) and 549 (3) of the Civil Procedure Act. Therefore, the authors' eviction was carried out in accordance with the law.

16.2 The Committee notes that the authors refused to leave their rented room despite having been notified sufficiently in advance by the lessor of her intention not to renew the lease and that the lease expired on 31 August 2012. In addition, starting in June 2012, the authors were unable to pay the lessor the monthly rent. In the absence of any information indicating that the lessor's action was not reasonable or necessary, the Committee considers that there were legitimate reasons for the authors' eviction and that it could therefore be justified.

16.3 The Committee notes the authors' claim that judicial guarantees were not observed during the proceedings and that their request for legal aid was denied by the competent authorities. The Committee also takes note of the State party's arguments that Court No. 37 observed all due process guarantees applicable under the Covenant (see para. 6.3). The Committee notes that Mr. Ben Djazia was able to obtain legal aid and be represented pro bono throughout the proceedings and that his lawyer submitted various judicial applications; that Mr. Ben Djazia was informed sufficiently in advance of the termination of his lease and of his eviction; and that the eviction took place at an appropriate time in the presence of officials of the court, the police and the representatives of the parties.

16.4 The Committee also takes note of the authors' allegations that Court No. 37 ordered the eviction without considering the possible consequences of this measure for the authors, in particular on their minor children, and that the legislation does not provide for the possibility, in judicial eviction proceedings, of defendants' objecting or lodging an appeal to explain the consequences of the eviction but that their only option is to claim that they have paid the rent, in full or in part. In this regard, the Committee observes that by its decisions of 30 May and of 2 and 22 July 2013, Court No. 37 ordered and subsequently confirmed the authors' eviction pursuant to articles 440 (4) (as amended by Act No. 37/2011), 549 (3) and 556 (1) of the Civil Procedure Act. Under these provisions and article 444 (1) of the same Act, during the proceedings, the defendant may only make claims relating to the payment of the rent or make a formal statement of intent to pay all amounts owed and thus interrupt eviction proceedings. Furthermore, the Committee notes that despite the absence of specific legislation that would allow a judge in eviction proceedings

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<sup>33</sup> See the Committee's statement regarding an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (2007).

to review the compatibility of the eviction with the Covenant (see paras. 15.1 and 15.2), on 30 May 2013, Court No. 37 instructed that the Department of Social Affairs and the Government Agency for Family and Social Services of Madrid City Council should be requested to adopt the measures that fall within their competence to protect Mr. Ben Djazia against situations of distress and, in particular, to inform the Court, within 20 days, of the specific measures to be taken to guarantee the right of the minor children to decent and adequate housing. The same request was reiterated on 2 July 2013. Moreover, the Court postponed the eviction on a number of occasions in response to requests by Mr. Ben Djazia.

16.5 The Committee notes the measures adopted by Court No. 37 to ensure that the authors, and in particular their minor children, were not left homeless or exposed to other human rights violations and considers, therefore, that in practice, the Court weighed the potential effects of eviction even though the law did not require it do so. The right to housing in the State party is not a fundamental right that can be directly protected through a remedy of *amparo*. Moreover, in eviction hearings, judges are not required by law to suspend the eviction until alternative accommodation is available for the person concerned. In fact, the law does not clearly and explicitly establish that judges have this authority or that they can order other authorities, such as social services, to take coordinated measures to prevent an evicted person from becoming homeless. In this context, Court No. 37 ordered the eviction of the authors and their children on 3 October 2013, despite the fact that the authors did not have alternative housing or sufficient income to obtain accommodation on the private market and that there is no record that the Social Services of Madrid responded in a timely manner to the Court's request.

16.6 As a result, after staying in a SAMUR short-stay shelter, the authors and their children slept in the family car for four days. Consequently, the Committee considers that the authors' eviction without assurances that alternative accommodation would be available would constitute a violation of the authors' right to adequate housing, were it not for the fact that the State party convincingly demonstrates that, despite having taken all reasonable measures, to the maximum of available resources, and having taken into consideration the authors' personal circumstances, it was unable to uphold the right to housing. In this case, the State has an even greater duty to justify the outcome because the authors' minor children, who were approximately 1 and 3 years old, were affected. The Committee proceeds with its assessment of the reasonableness of the State party's explanations.

#### **Justifications provided by the State party regarding the lack of access to alternative housing**

17.1 The Committee notes that the State party does not contest that the authors' family was in need of public housing and simply argues that the Madrid social services provided assistance to the authors, including in relation to housing, to the maximum of available resources, and that it was Mr. Ben Djazia who, to a large extent, hindered any improvement of his family's financial situation.

17.2 The Committee considers that States parties, with a view to rationalizing the resources of their social services, may set criteria or conditions that applicants must satisfy in order to receive social services. These conditions, however, must be reasonable and very carefully designed so as to prevent not only any stigmatization but also that the mere behaviour of a person in need of alternative housing be used to justify denying his or her application. In addition, the conditions must be communicated in a transparent, timely and complete manner to the applicant. Furthermore, it should be taken into account that the lack of housing is often the result of structural problems, such as high unemployment or systemic patterns of social exclusion, which it is the responsibility of the authorities to resolve through an appropriate, timely and coordinated response, to the maximum of their available resources.

17.3 In this case, the State party does not contend that Mr. Ben Djazia failed to satisfy the criteria or conditions for applying for public housing, but, rather, raises the issue of his behaviour in relation to the search for employment and alternative housing and of satisfying the criteria or conditions for other social benefits. The State party has not, therefore, demonstrated that the authors failed to meet some of the conditions that they had been informed were mandatory in order to obtain social housing. On the contrary, the Committee

notes that the author applied to the Madrid Housing Institute for social housing on at least three to four occasions from the time his children were born and that, on 4 June 2013, he reiterated his request to the Madrid Housing Institute, attaching the decision of Court No. 37 of 30 May 2013. In the light of the imminence of the eviction, Mr. Ben Djazia requested Court No. 37 to instruct the Social Services of the Madrid Community and City Council to request that the Madrid Housing Institute and the Municipal Housing and Land Company provide him with alternative housing.

17.4 The State party also argues that every year the Madrid Housing Institute receives an average of 8,000 requests for public housing and allocates an average of 260 housing units in Madrid. The State party seems to be implying that even though the authors met the criteria for receiving public housing, it was not granted to them in 2012 or 2013, when the eviction was imminent, owing to the limited resources available.

17.5 Noting the measures adopted in favour of the authors (see para. 4.5), the Committee considers the State party's arguments as insufficient to demonstrate that it has made all possible effort, using all available resources, to realize, as a matter of urgency, the right to housing of persons who, like the authors, are in a situation of dire need. For example, the State party did not explain that denying the authors social housing was necessary because it was putting its resources towards a general policy or an emergency plan to be implemented by the authorities with a view to progressively realizing the right to housing, especially for persons in a particularly vulnerable situation. Moreover, the State party has not explained to the Committee why the regional authorities in Madrid, such as the Madrid Housing Institute, sold part of the public housing stock to investment companies, thereby reducing the availability of public housing, despite the fact that the number of public housing units available annually in Madrid was significantly fewer than the demand, nor has it explained how this measure was duly justified and was the most suitable for ensuring the full realization of the rights recognized in the Covenant. For instance, in 2013, the Madrid Housing Institute sold 2,935 houses and other properties to a private company for €201 million, justifying the measure by a need to balance the budget.

17.6 The Committee considers that States parties have a certain amount of discretion to make the most appropriate use of tax revenue with a view to guaranteeing the full realization of the rights recognized in the Covenant,<sup>34</sup> and that, in certain circumstances, they may take deliberately retrogressive measures. However, in such cases, the State must demonstrate that the decision was based on the most thorough consideration possible and was justified in respect of all the rights under the Covenant and that all available resources were used.<sup>35</sup> In times of severe economic and financial crisis, all budgetary changes or adjustments affecting policies must be temporary, necessary, proportional and non-discriminatory.<sup>36</sup> In this case, the State party has not convincingly explained why it was necessary to adopt the retrogressive measure described in the preceding paragraph, which resulted in a reduction of the amount of social housing precisely at a time when demand for it was greater owing to the economic crisis.

17.7 Lastly, the Committee proceeds with its consideration of the State party's argument that SAMUR notified the authors that, if they had not found accommodation by the time they had reached the maximum stay at the short-stay shelter, accommodation could be offered to Ms. Bellili and the children at a women's centre and to Mr. Ben Djazia at a homeless shelter, and that the Social Services of the Madrid Community and City Council had offered the authors a similar alternative. If the authors had accepted this offer, the family would have been split up, in violation of the State's duty to grant the greatest and widest possible protection to the family, as the foundation of society, in keeping with article

<sup>34</sup> Communication No. 1/2013, *López Rodríguez v. Spain*, Views adopted on 4 March 2016, para. 13.3. See also the Committee's letter of 16 May 2012 (see footnote 31).

<sup>35</sup> General comment No. 4, para. 9. See also the Committee's statement regarding an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant, paras. 6, 8 and 11.

<sup>36</sup> The Committee's letter of 16 May 2012 (see footnote 31). See the Committee's statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (2016), para. 4.

10 (1) of the Covenant. In this regard, the State party has not explained to the Committee why no other options were available to the authors.

17.8 For these reasons, the Committee concludes that the State party has not submitted reasonable arguments to demonstrate that, despite having taken all necessary measures, to the maximum of available resources, it was impossible to provide the authors with alternative housing.

### **C. Conclusion and recommendations**

18. Given all the information provided and the particular circumstances of this case, the Committee considers that, in the absence of reasonable arguments on the part of the State party regarding all the measures taken to the maximum of its available resources, the authors' eviction, without a guarantee of alternative housing by the authorities of the State party as a whole, including the regional authorities of Madrid, constituted a violation of their right to adequate housing.

19. The Committee, acting pursuant to article 9 (1) of the Optional Protocol, is of the view that the State party violated the authors' right under article 11 (1), read separately and in conjunction with articles 2 (1) and 10 (1) of the Covenant. In the light of the Views contained in the present communication, the Committee makes the following recommendations to the State party.

#### **Recommendations in respect of the authors**

20. The State party has an obligation to provide the authors with an effective remedy, in particular: (a) in the event that the authors do not have adequate accommodation, to assess their current situation and, following genuine consultation with them, to grant them public housing or any other measure enabling them to enjoy adequate accommodation, taking into account the criteria established in these Views; (b) to award the authors financial compensation for the violations suffered; and (c) to reimburse the authors for the legal costs reasonably incurred in the processing of this communication.

#### **General recommendations**

21. The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The Committee considers that the State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State has the obligation to:

(a) To adopt appropriate legislative and/or administrative measures to ensure that in judicial proceedings in relation to the eviction of tenants, defendants are able to object or lodge an appeal so that the judge might consider the consequences of eviction and its compatibility with the Covenant;

(b) To adopt the necessary measures to resolve the lack of coordination between court decisions and the actions of social services which can result in an evicted person being left without adequate accommodation;

(c) To take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only following genuine consultation with the persons concerned and once the State has taken all essential steps, to the maximum of available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children and/or other persons in vulnerable situations;

(d) To develop and implement, in coordination with the autonomous communities, to the maximum of available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No.

4.<sup>37</sup> This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable and measurable manner.

22. In accordance with article 9 (2) of the Optional Protocol and rule 18 (1) of the provisional rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee. The State party is also requested to publish the Views of the Committee and to distribute them widely, in an accessible format, so that they reach all sectors of the population.

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<sup>37</sup> See also the Committee's concluding observations on the fifth periodic report of Spain (E/C.12/ESP/CO/5), para. 21.