15 May 2023

The United Nations Human Rights Committee
c/o OHCHR-petitions@un.org
Mr Ibrahim Salama
Chief
Human Rights Treaties Branch

**Communication No 2926/2017 — *Mr Imran Ali et al v Kingdom of Norway***

1. We are in receipt of the Norwegian Government's "Information on measures undertaken to give effect to the Views, adopted by the Human Rights Committee on 14 November 2022, concerning communication 2926/2017". The Government's communication calls for two comments:

   (1) as regards Norway's failure (admitted by the Government itself) to fulfil its obligations as to compensation; and
   (2) Norway's failure to fulfil its obligations as to prevention of future violations.

**(1) Norway's failure to fulfil its obligations as to compensation**

2. The Committee held in its Views that Norway:

   > "is under an obligation to provide the author's son with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to provide the authors' son with adequate compensation for the violations of his rights." (para 12).

3. Norway was given 180 days to take measures to give effect to the Committee's Views and to fulfil its duty to provide the authors' son with adequate compensation for the violation of his rights (para 13). As Norway itself explains, it has done exactly nothing to fulfil this legal obligation under the Covenant.

4. The Norwegian government instead makes the surprising contention that it "does not have a legal obligation under the Covenant in this regard".[1] It goes on to asseverate "that it does not fall within the competence of the Committee to order specific measures of reparation of violations of the Covenant".[2]

5. It is disappointing that Norway has elected to take up the time of the Committee, and of the authors and their counsel, with these dilatory and unmeritorious manoeuvres. Norway must forthwith provide the authors' son with appropriate compensation for the violations of his rights. Given the position taken by Norway, it is necessary and appropriate that the Committee now specifies the exact amount of compensation, so that the reparation due be made for the violation of Covenant rights.

6. There is no doubt that Norway has a legal obligation to make reparation for its violation, nor that the Committee has the competence, under the Covenant and the First Optional Protocol, to point this out and to order specific measures of reparation for the violation of the Covenant. Both of these propositions follow from general principle as well as from the Covenant and the First Optional Protocol themselves.

7. It is a principle of international law of general application that the State party's duty to make reparation for breach of a treaty obligation follows as an indispensable complement of the breach itself. In the classic case of *Spanish Zone of Morocco*, the arbitral tribunal explained that it had the competence to order specific measures of reparation on the following basis:

> "responsibility is the necessary corollary of a right. All rights of an international character involve international responsibility. If the obligation in question is not met, responsibility entails the duty to make reparation."[3]

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1 Information on measures taken to give effect to the View, adopted by the Human Rights Committee on 14 November 2022, concerning communication 2926/2017, p. 3.

2 *Ibid*.

3 *Biens britanniques au Maroc espagnole (Espagne c Royaume-Uni)* (1925) 2 RIAA 615, 641 ("*La responsabilité est le corollaire nécessaire du droit. Tous droits d'ordre internationale ont pour conséquence une responsabilité internationale. La responsabilité entraîne comme conséquence l'obligation d'accorder une réparation au cas où l'obligation n'aurait pas été remplie*.")

8. In the same vein the Permanent Court of International Justice observed in *Chorzow Factory (Jurisdiction)* that:

> "[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no need for this to be stated in the convention itself."[4]

9. The Permanent Court repeated and emphasized this in *Chorzów Factory (Indemnity)*:

> "it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. … [T]he Court has already said that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself."[5]

10. The very fact that the obligation to make reparation is a concomitant of the violation means that the Committee necessarily has the competence to order specific measures of reparation, whether or not this is specifically stated in the Covenant itself.

11. In any event, it follows from the inherent powers of the Committee that it has the competence to order specific measures of reparation, as this is necessary "so as to ensure the attainment of its purposes".[6]

12. Furthermore, as regards the Covenant, the legal basis for setting out measures of reparation in the Committee's Views is the obligation of States parties under Article 2.[7] It has been the settled interpretation for several decades that the Committee is empowered to conclude as to a duty, on the part of a State party, "to provide individual

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4 (1927) PCIJ Series A, No. 9, p. 21.

5 (1928) PCIJ Series A, No. 17, p. 29.

6 A/48/40 (Part I), 7 October 1993, Report of the Human Rights Committee, Annex X, B. Follow-up on Views adopted under the Optional Protocol to the International Covenant on Civil and Political Rights, para 6, citing *Certain Expenses of the United Nations*, Advisory Opinion, ICJ Reports 1962, p. 151, 166–167.

7 See the Committee's General Comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 16; Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, 30 November 2016, CCPR/C/158, para. 3.

reparation" in relation to a breach by it of the Covenant.[8] Article 5(1) of the Optional Protocol empowers, in fact obliges, the Committee to ensure compliance with its decisions: "[t]he Committee shall consider communications received under the present Protocol".[9] The word "consider" means "consideration in the sense of engaging in those tasks deemed necessary to ensure implementation of the provisions of the Covenant".[10]

13. If the Committee does not, as a general rule, tend to specify sums of money, that does not mean that it does not have the competence to do so when, by reason of the recalcitrance of the State party, it becomes necessary and appropriate. It should be remembered that States do not, as a general rule, take the singularly unhelpful approach that Norway is taking in the present matter.

14. As a matter of fact, in certain circumstances, the non-granting of a remedy recommended by the Committee may amount to a fresh violation of a provision of the Covenant".[11] The present case such a case: Norway's refusal to provide reparation, as it was directed by the Committee in its Views, amounts to a fresh violation of the Covenant.

15. As the authors have argued, in their letter to Norway of 9 February 2023, a copy of which was transmitted to the Committee, "any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts," that is, all the members of the close family of the authors' son.[12] In order for the compensation in this case to "wipe out all the consequences of the illegal act",[13] as it must, the compensation will by necessity have to be very substantial.[14] The authors continue to request that $200,000 would constitute appropriate compensation in the

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8 T Opsahl, "The Human Rights Committee" in P Alston, *The United Nations and Human Rights: A Critical Appraisal* (OUP 1992) 419, 427

9 Underlined here.

10 A/48/40 (Part I), 7 October 1993, Report of the Human Rights Committee, Annex X, B. Follow-up on Views adopted under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 6.

11 *Ibid* para. 6.

12 Letter of 9 February 2023, para. 6, citing *Ahmadou Sadio Diallo* (Compensation), ICJ Reports 2012, p. 344, para. 57; *Armed Activities on the Territory of the Congo*, Judgment of 9 February 2022, para. 102.

13 *Factory at Chorzów* (Merits) (1928) PCIJ, Series A, No. 17, p. 47.

14 Letter of 9 February 2023 (attached for ease of reference to this communication), paras 4–7.

present matter. The authors also request a public apology to the family for Norway's violations, all the more appropriate now given the unusual and unsatisfactory attitude Norway has taken as regards reparation of the violation. The authors request $10,000 for the costs of legal representation, that is, to cover the work of the authors' legal counsel. [15]

**(2) Norway's failure to fulfil its obligations as to prevention of future violations**

16. The flattering picture Norway draws of its current system of detention of child migrants is wrong.

17. In fact, as the Government itself admits it is possible under the current legislation for a child migrant to be detained for longer than 24 hours (a limit that the Government is, in any event, seeking to extend: see below). The detention can even, under the current regime and depending on the circumstances, exceed three days and last for as long as nine days.[16]

18. As regards the new detention facility, the Government admits that, still under the new dispensation, the doors and windows of the cells of the facility are locked. Locking the cell at night was one of the aspects to which the Committee drew attention in its Views (para 10.8) and which led to the violation of the Covenant. In the present case, it had the effect of disturbing the sleep pattern of the authors' son so that he was awake during the nights (para 10.8).

19. The Government's evolving regime of child detention has also been criticized by its own authorities. The Government's own supervisory council for migrant child detention (*Tilsynsrådet for tvangsreturer og utlendingsinternatet*) explained as recently as 8 May 2023 that the Government has proposed new legislation that will have as its effect the increased detention of children.[17] The Government's proposed legislation is

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15 Letter of 9 February 2023, para. 11.

16 Information on measures taken to give effect to the View, adopted by the Human Rights Committee on 14 November 2022, concerning communication 2926/2017, p 2.

17 "*Økt internering av barn kamufleres som barnets beste*" ("Increased detention of children camouflaged as being in the best interest of the child"), *Aftenposten*, 8 May 2023, available at

set out in Prop. 103 L (2022–2023).[18] The general rule, to which the Government refers in its reply, that "[a] minor foreigner who is arrested should not normally be held for longer than 24 hours"[19] would in the proposed legislation be extended. The rationale for this new rule according to which children can be detained for longer is said to be that the child and its family will, during this longer period of detention, be better able to reorient themselves to a new situation. The Committee may well feel that there is a streak of the Kafkaesque to this reasoning. As the Government's own supervisory council explains, this solution will inexorably lead to more children being detained.[20] The supervisory council also criticizes the Government's plan to make it easier to detain children, without judicial authorization, beyond 24 hours.

20. Norway has not fulfilled, and is not fulfilling, its obligation to prevent the recurrence of violations in the future. The authors reiterate that, as regards preventing the recurrence in the future of similar violations, they trust that the Committee will, given its role in the system of the Covenant, closely monitor Norway's response.[21]

21. In conclusion, the authors request that the Committee order that Norway:

(a) pay the authors $200,000 in compensation;
(b) make a public apology for the violation;
(c) pay the authors $10,000 for legal representation; and
(d) must take further measures in order to prevent the recurrence of similar violations in the future.

**Professor Mads Andenas KC**
**Professor Eirik Bjorge**

https://www.aftenposten.no/meninger/kronikk/i/q1bJRm/oekt-internering-av-barn-kamufleres-som-barnets-beste.

18 Prop. 103 L (2022–2023), available at https://www.regjeringen.no/no/dokumenter/prop.-103-l-20222023/id2971393/.

19 Information on measures taken to give effect to the View, adopted by the Human Rights Committee on 14 November 2022, concerning communication 2926/2017, p 2.

20 "*Økt internering av barn kamufleres som barnets beste*" ("Increased detention of children camouflaged as being in the best interest of the child"), *Aftenposten*, 8 May 2023.

21 Letter of 9 February 2023, para. 12.

9 February 2023

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Mr Ibrahim Salama
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**Communication No. 2926/2017 — *Mr Imran Ali et al v Kingdom of Norway***

1. We write in connection with the decision of the United Nations Human Rights Committee in Communication No. 2926/2017. In its decision the Committee found that there had been a violation by Norway of the rights of the authors' son, Wahaj Ali, in relation to his family's 76 day long detention in the Norwegian Police Immigration Detention Centre at Trandum. Wahaj was 1–2 years old at the time. The Committee, acting under article 5 (4) of the Optional Protocol, decided that the facts before it disclosed a violation by Norway under article 24 of the Covenant. The government of Norway itself acknowledged, in its letter from the Ministry of Justice and Public Security of 6 June 2018, that Wahaj spent 76 days at the Trandum facility (see para. 10.8 of the Committee's decision).[1]

2. Norway's obligations under the Covenant require, as the Committee observed, Norway "to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to provide the authors' son with adequate compensation for the violations of his rights. It should also prevent the recurrence of such violations in the future" (para. 12). The Committee recalled that "children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interest as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors" (para. 10.3).

3. The Committee accepted the authors' description (in para. 10.8) of the facilities at the Trandum centre, which *inter alia* were "badly equipped to accommodate families with small children for more than one night", that "the family was accommodated in a small cell that, at least initially, was locked at night", and "that the family unity was not shielded from the rest of the centre, exposing their son to the cries and shouts of other detainees".

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1 The paragraph references below are to the Committee's decision in Communication No. 2926/2017.

4. As Norway will be aware, the breach of 76 days of deprivation of liberty of a family with a 1–2 year old child is, by any standard, unusual in its outrageousness. It is certainly unprecedented in modern Norwegian legal history as it is in the case-law of the Committee.

5. In order for the "full reparation" to which the Committee makes reference to amount to "adequate compensation for the violations" (para. 12), the reparation must necessarily be of such a nature and scale that it "wipe[s] out all the consequences of the illegal act".[2] As stated in Article 34 of the International Law Commission (ILC) Articles on State Responsibility, "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination". Compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible.[3]

6. It is also well-known that, as the International Court of Justice has observed, "any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts",[4] that is, all the members of Wahaj's close family.

7. In the *Diallo* case the International Court of Justice awarded $85,000 in moral damages for the detention and subsequent expulsion of Mr Ahmadou Sadio Diallo, a single adult, who had been detained for a shorter period than the time Wahaj was detained.[5] The great difference between Mr Diallo and Wahaj however is that, whereas Mr Diallo was an adult, Wahaj was at the relevant time a child of 1–2 years. In light of the outrageous facts of the present proceeding, the reparation due, in whatever form it takes, will by necessity have to be very substantial.

8. The family has applied for a permit to stay in Norway, and we refer in that regard to their earlier applications and submissions. The Committee's decision adds to the grounds for the grant of a right to stay, on strong humanitarian grounds, for Wahaj and his close family under section 38 of the Norwegian Aliens Act. This applies to the conclusion of the Committee decision, but also to the findings that the Committee made in its decision. The altered conditions in Afghanistan, and the family's current situation in Turkey, where they are at present, add further grounds.

9. It is not conceivable that a grant of a right to stay could have any negative consequences for Norwegian immigration policy. We understand that the Government's case is that

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2 *Factory at Chorzów*, Merits, Judgment No. 13, 1928, PCIJ, Series A, No. 17, p. 47

3 *Certain Activities Carried Out by Nicaragua in the Border Area* (Compensation), ICJ Reports 2018, p. 26, para. 31.

4 *Ahmadou Sadio Diallo* (Compensation), ICJ Reports 2012, p. 344, para. 57; *Armed Activities on the Territory of the Congo*, Judgment of 9 February 2022, para 102.

5 *Ahmadou Sadio Diallo* (Compensation), ICJ Reports 2012, p. 333–35, paras. 18–25.

the violations at issue in this proceeding could only possibly be a one-off, and anyway that the conditions today at the facilities used for family detention are such that it is not conceivable that the violations could be repeated.

10. We request that the grant of a right to stay for Wahaj and his close family is considered under section 38 of the Norwegian Aliens Act.

11. Given that the Committee conceives of the present matter as one focussed on the rights of Wahaj, and with the benefit now of the issue of violation of the Covenant having been fully considered by the Committee, the authors further consider that $200,000 would constitute adequate compensation in the present matter. The authors also request a public apology to the family for Norway's violations. The authors request $10,000 for legal representation.

12. As regards preventing the recurrence of similar violations in the future, the authors trust that the Committee will, given its role in the system of the Covenant, monitor closely Norway's response in this regard.

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