



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 3742/2020*, **

<i>Communication submitted by:</i>	Gentilmen Issa Magumba (represented by counsel, Shin Young Chung)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Republic of Korea
<i>Date of communication:</i>	1 May 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 26 May 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	13 March 2026
<i>Subject matter:</i>	Risk of deportation to the Democratic Republic of the Congo due to inability to submit application for refugee status from the airport transit area
<i>Procedural issues:</i>	Admissibility – lack of substantiation; exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment; arbitrary detention; conditions of detention
<i>Articles of the Covenant:</i>	6 (1), 7, 9 (1) and 10 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Gentilmen Issa Magumba, a national of the Democratic Republic of the Congo born on 10 August 1974. He claims that the State Party has violated his rights under articles 6 (1), 7, 9 (1) and 10 (1) of the Covenant. The Optional Protocol entered into force for the State Party on 10 July 1990. The author is represented by counsel.

* Adopted by the Committee at its 145th session (2–19 March 2026).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Tijana Šurlan, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Soh Changrok did not participate in the examination of the communication.



1.2 On 26 May 2020, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to grant interim measures and requested the State Party to refrain from deporting the author to the Democratic Republic of the Congo while his communication was being considered.

1.3 On 7 September 2020, the State Party requested that the admissibility of the communication be examined separately from the merits. On 11 March 2021, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to examine the admissibility of the communication together with its merits and to maintain interim measures. It also requested that the author be removed from the transit zone of the airport, where he was being held, and be provided with basic accommodation and with access to adequate food and nutrition and appropriate medical care.

Factual background

2.1 The author was a businessman in the Democratic Republic of the Congo. In 2015, the author sent two male co-workers, Abou and Kataweza, to help a business partner. Thereafter, the author learned that Abou and Kataweza had been forced to join the Alliance of Democratic Forces – National Army for the Liberation of Uganda (ADF-NALU), a Ugandan-led armed rebel group active in the east of the Democratic Republic of the Congo. Two years later, the author himself was kidnapped and forced to join ADF-NALU and to undergo military training in the forest of Beni. During the training, the author witnessed killings of people by members of ADF-NALU under the influence of drugs. The author was also forced to dig minerals, such as coltan, uranium and tourmaline. The author considered the rebel group as a criminal movement and was able to flee after six months when ADF-NALU fought against the Government.

2.2 When the author returned to his hometown, no one knew that he had been kidnapped by ADF-NALU. However, since his co-worker Kataweza had been killed, Kataweza's family accused him of being a member of ADF-NALU, burned his house and killed his twin brother. The author could not report these incidents to the police out of fear that he would be persecuted for joining ADF-NALU. The author's five children and one nephew had to run away out of fear of the police and people accusing him of being a member of a rebel group. The author lost contact with his children and nephew and does not know their whereabouts.

2.3 The author hid in Virunga National Park for four months. He then managed to leave the Democratic Republic of the Congo with the help of a friend in Indonesia. The author crossed into Rwanda and fled through Kigali airport for Indonesia. As he suspected that the intelligence agency of the Democratic Republic of the Congo was sending its agents to arrest him in Indonesia, he fled to Viet Nam and contacted the Office of the United Nations High Commissioner for Refugees (UNHCR) in Hanoi. However, the author was advised to travel to Bangkok for assistance. He instead decided to leave for Palau.

2.4 On 15 February 2020, while on his way to Palau, the author arrived at Incheon International Airport in Seoul on Asiana Airlines as a transit passenger. He fell asleep, and when he woke up he realized he no longer had his passport and felt he had no more energy to travel further. The author approached an immigration officer at a checkpoint in the airport and declared that he wanted to apply for refugee status in the State Party (at 10.48 p.m.). He was briefly interviewed about the reasons for seeking asylum. The immigration officer took written note of the author's statement and scanned his identification document.¹ The immigration officer also informed him that he was not eligible to apply for refugee status in the State Party as he was a passenger in transit and he had not gone through immigration control to enter the country. The author was then accompanied by an employee of Asiana Airlines who escorted him to the transit area of the airport's Terminal 1. The author has been held in the transit area since. He adds that employees of Asiana Airlines tried to force him to exit the transit area and leave the State Party, also with the help of a Congolese diplomat.²

¹ No further details were provided about the type of ID used (which was other than his passport).

² No further details were provided.

2.5 After the refusal to register his refugee application, on 3 March 2020, the author was able to email the UNHCR office in the Republic of Korea to seek assistance. UNHCR contacted lawyers in the Republic of Korea, who on 31 March 2020 filed a request to cancel the refusal of the author's application for refugee status at the airport, with Incheon District Court. The case was pending at Incheon District Court at the time of submission of the communication.³

2.6 The author primarily claims that the refusal of his refugee application at the border amounts to de facto refoulement, without review of the risk of irreparable harm. **Since there has been no precedent of an individual in a similar situation to that of the author, whose complaint would be accepted by a court, despite being outside the State Party's jurisdiction, the author fears that the State Party can remove him at any time from the transit area.** Given the absence of legal grounds to prevent execution of the author's removal from the State Party, the risk of his refoulement is imminent, even if the present case is pending at Incheon District Court.

2.7 He notes that the State Party has detained asylum-seekers who had their refugee application rejected at the port of entry in the "deportation waiting room". **He notes that in his case, the State Party has not issued a non-referral decision or repatriation order, as he was not even given the opportunity to apply for refugee status at the port of entry and was left in the transit area without assistance or clear a timeline for a possible solution.** He adds that there is no law or policy on reviewing the legality of detention in the transit area.

2.8 On 13 July 2020, after he submitted the communication to the Committee, the author filed an application for a habeas corpus review to Incheon District Court, **arguing that his stay in the transit area constitutes an "illegally initiated detention" under the Habeas Corpus Act.** On 13 April 2021, the author entered the Republic of Korea as a result of successful administrative litigation and has been staying in its territory on a visa for refugee applicants while the refugee status determination proceedings were pending.

2.9 However, at the time of submission of the communication, the author claimed that he had exhausted available domestic remedies, arguing that since the administrative asylum procedure, and the related administrative court proceedings, are unreasonably prolonged, there is no need to exhaust such remedy.⁴ He also refers to Committee's jurisprudence and states that he does not need to exhaust the remedies that are unlikely to succeed.⁵ The same matter has not been submitted to another procedure of international investigation or settlement.

Complaint

3.1 The author claims that the State Party's refusal to accept his refugee application on 15 February 2020 at Incheon International Airport, without a review of the risk of irreparable harm, constitutes a violation of his rights under articles 6 and 7 of the Covenant, if he were to be removed.⁶ Such refusal would lead to his de facto refoulement, in violation of article 7 of the Covenant, to the Democratic Republic of the Congo, where he has been accused of being a member and a recruiter of a rebel group and has been under threats from the authorities and from the family of his co-worker Kataweza. He claims to have established that he faced a real risk of irreparable harm.⁷

3.2 Under the law of the Republic of Korea, a refugee application can be made at the port of entry. When a foreigner makes a refugee application at the port of entry, the application is subject to an assessment of the admissibility of the case, instead of full examination of the substantive claim. In order to ensure the non-refoulement of asylum-seekers, the State Party should have an appropriate procedure for reviewing the risk of irreparable harm under articles 6 and 7 of the Covenant regardless of the place of application. The only ground for

³ The pending court case is to request the State Party's immigration authorities to accept the refugee application, which would require further legal proceedings after the decision is made. If the author's case were allowed, he would be able to submit the refugee application and the State Party would conduct the initial assessment of the case.

⁴ *Coronel et al. v. Colombia* (CCPR/C/76/D/778/1997), para. 6.2.

⁵ *Thompson v. Panama* (CCPR/C/52/D/438/1990), para. 5.2.

⁶ Human Rights Committee, general comment No. 31 (2004), para. 12.

⁷ *Warda Osman Jasim v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.3.

the State Party to refuse the refugee application of the author was that he was not a foreigner “undergoing an entry inspection” but a mere transit passenger. The State Party interpreted article 6 of the Refugee Act literally, that only a foreigner “undergoing an entry inspection” is entitled to apply for refugee status at the port of entry.

3.3 The author argues that confinement to a restricted area of an airport including the transit area amounts to deprivation of liberty under article 9 of the Covenant.⁸ The author thus contends that by detaining him in the transit zone of Incheon International Airport without legal grounds, since no administrative order has been issued, for an indefinite period and without the possibility of the legality of his detention being reviewed in the transit area, his rights under article 9 (1) of the Covenant have been violated.

3.4 The author adds that he is not in the transit area voluntarily, since he has no choice to leave the State party⁹ as he would be subject to torture or other ill-treatment in the Democratic Republic of the Congo. Furthermore, as the coronavirus disease (COVID-19) pandemic persists, more countries are enforcing entry bans on individuals who have stayed in the State Party; the author cannot travel to other countries. He has been held in the transit area since 15 February 2020. He adds that no independent review mechanisms exist to determine the legality of the prolonged detention, asserting that a release request under the Protection of Personal Liberty Act¹⁰ is not likely to succeed, as no precedent decision has been rendered to help those detained in the transit area in the airport.

3.5 Furthermore, the author claims to have been held in inhumane conditions and to have faced inhumane treatment in the transit area, as he has no privacy, and limited access to medical services, and is forced to live under constant lighting. In addition, he was held without any protection measures amid the COVID-19 pandemic, which amounts to a life-threatening situation due to a higher risk of COVID-19 infection. Therefore, the State Party has violated the author’s rights under articles 6 (1), 7 and 10 (1) of the Covenant.

State Party’s observations on admissibility

4.1 On 7 September 2020, the State Party objected to the admissibility of the communication, requesting that the admissibility be examined separately from the merits. First, the State Party asserted as to the factual background that the author expressed his intent to seek asylum only on 18 February 2020, to an airport security guard. On 31 March 2020, the author filed a case requesting Incheon District Court to cancel the State Party’s refusal of his refugee application. Incheon District Court, in its ruling of 4 June 2020, stated that there were not sufficient grounds or evidence to recognize that the author had expressed an intent to apply for refugee status at the immigration desk in the airport or that the State Party had refused receipt of such application. **However, the Court ruled in favour of the author, citing the Refugee Act (art. 5 (4)), which stipulates that “an immigration control official shall positively help foreigners who inquire about applying for refugee status or express their will to apply therefor”.** The State Party appealed and the case was pending before Seoul High Court. After submitting the complaint to the Committee, on 13 July 2020, the author filed an application for a habeas corpus review to Incheon District Court, arguing that his stay in the transit area constituted an “illegally initiated detention” under the Habeas Corpus Act. **This case was under review in Incheon District Court at the time of submission of the State Party’s observations.** The State Party argued that the author had failed to exhaust available domestic remedies, since the proceedings concerning his asylum request were pending before Seoul High Court, and in Incheon District Court in respect of his habeas corpus application. The State Party also considered the author’s claims as not substantiated, arguing that there had been no unjustifiable or unreasonable delay in the length of the judicial proceedings.

⁸ Human Rights Committee, general comment No. 35 (2014), para. 5, in which a reference is made to concluding observations on Belgium (CCPR/CO/81/BEL, para. 17, regarding detention of migrants pending expulsion). See also the UNHCR revised Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, of 2012.

⁹ In *Amuur v. France*, the European Court of Human Rights rejected the argument that the persons seeking asylum could have left the transit zone, which was “closed on the inner side” but remained “open to outside” as no country was offering protection to the asylum-seekers.

¹⁰ A habeas corpus application.

4.2 Subsequently, the State Party attested that the author was continuing to be kept in the transit area of the airport, where he could use various facilities, including medical treatment. His habeas corpus application was dismissed by Incheon District Court on 19 November 2020. **The Court stated that the author was not a detainee but had been staying in the transit area as he was not allowed to enter the State Party.** The author appealed the decision, and the case was pending at Incheon High Court at the time of submission of the State Party's observations.

Author's comments on admissibility

5.1 On 14 December 2020, the author submitted his comments on the State Party's observations on admissibility, objecting to the allegations of failure to exhaust domestic remedies since the relevant procedures were unreasonably prolonged and unlikely to succeed. He corrected some inconsistencies in his accounts of the facts due to his physical and mental strains, arguing that the State Party had failed to provide him with adequate means of subsistence by keeping him in the transit zone. **He lived on cash donated by acquaintances of his counsel to buy food, and on food occasionally given by passengers in the transit area. Despite indications that lounges, showers and free Internet kiosks are available in the transit area, the author noted that the shower facility was closed after the outbreak of COVID-19 and that he was allowed to use the facility only once a week.** As regards the author's detention in the transit area, Incheon District Court dismissed his habeas corpus application on 19 November 2020 as it did not consider the author to be a detainee. The author appealed the decision, and the case is pending at Incheon High Court. In the view of the author, it was not clear how long the judicial procedure would last, and whether he would be allowed to leave the transit area, unless he won the litigation to cancel the non-referral decision on his refugee application.

5.2 The author's health conditions deteriorated further and, although he was sent to the hospital at Incheon International Airport, he received painkillers, without a proper examination and diagnosis. By failing to provide him with access to food, decent accommodation and proper medical treatment, the State Party has violated his right to life.

5.3 As regards the author's eligibility to apply for refugee status, Incheon District Court in its ruling of 4 June 2020 found that the author clearly had expressed his intent to apply for refugee status since 18 February 2020. **The author reiterated that the State Party was thus obliged to take measures under article 6 of the Refugee Act, such as assisting the author to write and submit the refugee application form and to pursue the refugee status determination procedure.** The court concluded that the State Party's omission to assist the author has amounted to a violation of article 6 of the Refugee Act. The State Party appealed against the court's ruling, insisting that the author was not entitled to apply for refugee status since he was a mere transit passenger.

State Party's observations on admissibility and the merits

6.1 In its submission of 6 July 2022, the State Party argued that the communication should be considered inadmissible, or without merit.

6.2 On the question of admissibility, the State Party recalled that the author had not exhausted all available domestic remedies. Moreover, the application of domestic remedies had not been unreasonably delayed or ineffective. The State Party noted that, while in the transit area, the author filed on 31 March 2020 a request to Incheon District Court "to cancel the Government's refusal of his refugee application and recognize that the non-initiation of the refugee status determination procedure at the port of entry was unlawful."

6.3 The author entered the Republic of Korea because of successful administrative litigation, and he has been staying in its territory on a visa for refugee applicants while the refugee status determination proceedings were pending. The rights of the author were therefore upheld by the domestic judicial procedures.

6.4 As to the merits, the State Party opposed as unreasonable the author's arguments that the rejection of his application for refugee status at the border by its immigration authorities constituted a forced expulsion or de facto refoulement of the author, in violation of articles 6 (1) and 7 of the Covenant. The State Party also noted that there was no possibility

that the author would be repatriated against his will during the refugee status determination procedure, pursuant to article 62 (4) of the Immigration Act.

6.5 Regarding the article 9 claims, the State Party held that the author had not been deprived of his liberty upon arrival at Incheon International Airport on 15 February 2020 as he could have secured a seat on an Asiana Airlines flight departing for Palau. **Although the author could have freely left the transit area at any time, he decided to remain there due to his will to enter the State Party.** There was hence no act of “arbitrary arrest or detention” or “deprivation of liberty” and the State Party complied with its obligations under article 9 (1) of the Covenant. Finally, the State Party asserted that the author had been provided, when in transit, with emergency medical services and had been granted access to legal counsel, in accordance with article 10 (1) of the Covenant.

Author’s comments on the State Party’s observations on admissibility and the merits

7.1 On 7 November 2022, the author submitted his comments on the State Party’s observations of 6 July 2022.

7.2 The author noted that he had been released from the transit area on 13 April 2021, pursuant to the order by Incheon District Court as confirmed by Incheon High Court. On 24 May 2021, the State Party accepted the author’s application for refugee status, following the decision by Seoul High Court of 21 April 2021, in which the Court found that the decision of the immigration authorities not to accept the application for refugee status from the author was unlawful. **Since November 2022, there has been no progress in the refugee status determination procedure in the author’s case.** He has continued to live in the State Party on a temporary visa. The author has been struggling to survive, as his work contracts have constantly been terminated on account of his health condition,¹¹ and he has had to rely on charity activities because he has been without regular income or social support.

7.3 With regard to the detention of the author in the transit area, the State Party should have released him as soon as possible; and at least after the Incheon District Court finding of 4 June 2020 that the authorities’ refusal to accept the author’s application for refugee status was unlawful. The author was released from the airport transit area only after **the interim measures request to release him**, issued by Incheon High Court on 13 April 2021. **Such delay in remedial procedure has not been justified and should be considered unreasonable.** As regards the implications for the right to life, the author faced life-threatening difficulties during his stay in the airport transit zone for 14 months, without a remedy. While he could have sought compensation from the State Party, he was afraid of the possible repercussions of doing so during the refugee status determination procedure. He therefore considered the compensation claim not to be an available remedy.

7.4 In addition, the author considered the State Party’s objections to his claims under articles 6 (1) and 7 (para. 3.2 above) as misleading; however, he admitted that the State Party had exercised discretion over the refugee status determination procedure and the right to regulate the entry and stay of the aliens. In the present case, the State Party did not allow the author to apply for refugee status just because he was a transit passenger. Without specific legal provisions to ensure an effective and independent review of the decisions over the application for refugee status at the border, rejected asylum-seekers are deprived of the right to non-refoulement, in violation of the Covenant.¹²

7.5 As regards the objections to the alleged violations of article 9 (1), the author considers that the State Party’s arguments are based on the legal fiction that the asylum-seeker can freely leave the transit zone and the State Party and go to any other country. The author refers to the Committee’s case law that any decision to keep a person in detention should be subject to a periodic review so that the grounds justifying detention can be assessed; **the detention should not continue beyond the period for which the State can provide appropriate justification.** The author submits that although there was not an affirmative decision to detain him in a specific place, it was the administrative power of the State Party that deprived the author of liberty by not allowing him to leave the transit area during the judicial proceedings from February 2020 to April 2021. Without legislative measures prohibiting detention, in the

¹¹ The author has generally referred to the chronic pains in the lower parts of his body, which prevented him from working efficiently.

¹² *Alzery v. Sweden* (CCPR/C/88/D/1416/2005), para. 11.8.

transit area, of asylum-seekers rejected at the border, the State Party continues to practice de facto arbitrary detention of rejected asylum-seekers, thereby violating article 9 (1) of the Covenant.

7.6 As to the claims of violations of articles 6 (1), 7 and 10 (1) of the Covenant, the author notes that the State Party held that since the author had not been formally detained, it had no obligations towards him in the transit area, which was equipped with appropriate facilities.

The author objected, noting that he was destitute and could not afford the high prices of goods and services in the transit area. He also objected to the way in which the State Party qualified the fact that he had been provided with a separate room for interviews with his legal counsels on eight occasions within 14 months as “humanitarian”. He contends that asylum-seekers are entitled to the right to counsel and the provision of a room for meetings with the counsels is a legal requirement, not a humanitarian gesture. The Covenant requires from the State Party a heightened duty of care to take necessary measures to protect the lives of individuals deprived of their liberty by the State.¹³ However, the State Party failed to take any measures to protect the author from the COVID-19 pandemic. The author reiterated that his life in the transit area was sustained by donated goods, including food, face masks, soap and medicines. The author also had difficulty in maintaining hygiene, as the shower facility was closed during the COVID-19 pandemic, and he lacked access to medical services. Without adequate measures to sustain the author’s life in the transit area, the State Party violated its obligations under articles 6 (1), 7 and 10 (1) of the Covenant, breaching the duty of care towards the author.

7.7 The author recalls that he forcibly left his home in 2017 after having been kidnapped and that he had no safe place to return to and was left without legal protection or remedies for more than 33 months.

State Party’s further observations

8.1 On 1 February 2023, the State Party submitted that although the refugee status determination procedure in the author’s case was still pending, it nevertheless represented an available domestic remedy that had neither been unreasonably prolonged nor ineffective. However, the State Party recognized its comparatively low refugee recognition rates, and acknowledging the criticism regarding the time-consuming nature of the refugee status determination procedures, it has taken various measures to address the issue, including increasing the number of refugee status determination officers and improving the procedural fairness of refugee status determination interviews.

8.2 As for the author’s extended stay in the airport transit area, the State Party objected to the author’s allegations of undue delays, recalling that he exited the transit area on 13 April 2021 and entered the State Party’s territory, after a successful administrative litigation at court. If the author had suffered harm due to the Government’s actions causing alleged infringements of his right to life, he could seek a judicial remedy, for example by filing a claim for compensation.

8.3 The State Party contends that, notwithstanding the author’s refugee application pending since 24 May 2021, and except for a compensation claim, all other remedies sought initially by the author have either been satisfied through domestic procedures or have become moot. Since the author has not attempted to exhaust the compensation claim, his communication should be declared inadmissible.

8.4 The State Party also submitted observations on the author’s comments on the merits, informing the Committee about the policy reform with respect to applications for refugee status in transit areas, outlining Seoul High Court’s interpretation of the Refugee Act such that airport transit passengers may also apply for refugee status.¹⁴ The Government revised the *Refugee Policy Manual* so that if an airport transit passenger expressed their intention to enter the Republic of Korea and apply for refugee status, they should be transferred to the relevant public officials for further processing “without delay”. The State Party also mentioned the improvements in the airport waiting areas for foreigners denied entry.

¹³ Human Rights Committee, general comment No. 36 (2018), para. 25.

¹⁴ On 21 April 2021, Seoul High Court held (decision 2020Nu45348) that foreigners who enter the transit areas, which are under the jurisdiction of the Republic of Korea, have a right to seek asylum under article 6 of the Refugee Act.

Author's additional comments

9.1 On 8 June 2023, the author submitted additional comments, indicating that his refugee application had been pending at the first stage for over 39 months since he arrived in the State Party to seek protection and that he had not been interviewed by refugee status determination officers as at June 2023. The author could not work due to his health status, and he was not entitled, as a person seeking refugee status, to any social security services. He had been left destitute, without any protection from the State Party.

9.2 The author reiterated his arguments about the lack of effectiveness of the pending refugee status determination procedure, which even once concluded would not have addressed either compensation in relation to his detention in the airport transit area, or the merits of his claims, including the alleged violations of the right to life. He informed the Committee that he had filed the compensation claim on 24 April 2023 due to his detention in the transit area.

9.3 The author also noted the State Party's efforts to improve the conditions in the airport transit area to prevent similar cases, pursuant to the High Court decision of 21 April 2021, allowing transit passengers in the airport to seek asylum and to have their applications processed without delay.

State Party's additional observations

10.1 On 17 November 2023, the State Party submitted additional observations on admissibility and the merits, reiterating its argument of lack of exhaustion of domestic remedies.

10.2 Although the author pursued the refugee status determination procedure, there is no evidence that it has been unreasonably prolonged or ineffective. The author also filed a compensation claim against the State on 24 April 2023. The domestic remedies have proven effective and timely, and the communication should be considered inadmissible.

10.3 As for the alleged unreasonable delays in recognizing the author as a refugee, in June 2023 the authorities summoned the author on two occasions, but he did not attend the scheduled appointments, without advising that he would not attend, and could not be reached. On 3 August 2023, the authorities conducted the interview. On 29 August 2023, the author's application for refugee status was rejected, and he did not qualify for subsidiary humanitarian status (protection) either. On the same day, the author appealed the negative decision to the Minister of Justice. The appeal procedure was ongoing as at October 2023. His appeal to the Minister proves that the available domestic remedies had not been exhausted. Therefore, the author's criticism that the refugee status determination procedure has been unreasonably delayed is unfounded.

10.4 As for the criticism that the refugee status determination procedure is ineffective due to the low refugee recognition rate, the data show that the refugee status determination procedure is effective, and appeals are guaranteed.

10.5 The State Party rejected again that it had arbitrarily detained the author as a foreign national in the airport transit area. Its Refugee Act operates two distinct refugee application systems: a (general) refugee status determination system for foreigners residing in the country, and a port-of-entry refugee status determination system for those arriving, in line with the Convention relating to the Status of Refugees, of 1951. **When a foreign national arriving at a port of entry seeks refugee status but is denied protection, the individual has the option to return to their home country, to go to a third country or to stay at the port of entry and challenge the decision through judicial procedures.** If the authorities reject an application for refugee status, the individual is denied entry and is not permitted to leave the airport. Even if he or she opposes a removal to a foreign country, there are no restrictions on personal liberty. An individual can freely navigate the departure and transit areas of the airport and determine the duration of the stay at the airport based on their own preferences.

10.6 The terminal at Incheon International Airport covers a large area requiring a 50-minute walk, and individuals are no longer confined to a limited space such as the departure waiting area inside the terminal, enjoying freedom to move around. The author's claim that the current departure waiting area is a facility where he can be involuntarily detained indefinitely is not accurate.

10.7 The State Party also objected to the alleged infringement of the author's right to life, due to the cited absence of remedies and unreasonable prolongation of the refugee status determination procedure, leading to deprivation of his livelihood. It noted that article 40 of the Refugee Act allows a refugee applicant to apply for a living allowance. The author has never submitted such an application and has never applied for a work permit either. Moreover, the author applied for medical expenses once in March 2023, which was denied as the amount requested was too small to meet a required threshold. Prior to that, the author received medical treatment on 7 July 2020 during his stay in the airport transit area, and the medical record stated that the urgency was not proven. The State Party submitted that the author's claim that the Government's failure to provide social assistance had rendered him destitute, constituting an infringement of his right to life, had not been substantiated. The State Party concluded that there was no violation of articles 6 (1), 7, 9 (1) and 10 (1) of the Covenant.

10.8 As regards the allegations of poor conditions in the departure waiting area at the airport, the State Party objected that such claims went beyond the scope of the Committee's examination and were factually untrue. However, the Government has made improvement plans in anticipation of similar cases in the future. It refuted the cited difficulties in obtaining food in the airport transit area due to financial constraints, including having to rely on food provided by passing passengers. Since August 2022, when the management of the departure waiting areas shifted to the Government, meals have been provided from the public budget. As regards the quality, the State Party added that breakfast was served as a snack, and the lunches and dinners were the same as the in-flight meals provided on international flights. The claims of poor quality should be deemed inappropriate.

10.9 As regards the claims that "medical services are largely unavailable" in the departure waiting area, the State Party submitted that basic medicines were available on-site, and that in 2022, Incheon International Airport paramedics had addressed 23 cases of minor illnesses, and 12 cases had received outpatient treatment outside the airport.

10.10 As regards the criticism of the draft law establishing the departure waiting centre, outside ports of entry, the author submitted that the operation of such a centre may lead to indefinite detention of applicants for refugee status. The State Party noted that the draft law, which had been presented to the National Assembly of the Republic of Korea on 15 December 2022 and was pending at the time, could not be considered as allowing arbitrary detention, as its aim was to bring about improvements in living conditions and rights for those who stayed in the airport for a longer period, including by addressing concerns raised about limitations with regard to meals and personal items.

Author's additional comments

11. On 2 June 2025, the author submitted an update on the status of the refugee status determination procedure, noting, *inter alia*, that his refugee application had been rejected by the Incheon Immigration Office on 29 August 2023 and his appeal against the negative decision had been rejected by the Minister of Justice on 24 November 2023. Subsequently, the author filed an administrative lawsuit at Incheon District Court, seeking revocation of the non-recognition of his refugee status, but the Court dismissed his claim on 26 July 2024. The author also filed a civil claim for damages under article 2 (1) of the State Compensation Act, arguing that public officers unlawfully had restricted his liberty by leaving him stranded for 14 months in the airport transit zone, without access to asylum procedures. The Court dismissed the author's claim for compensation on 19 June 2024.

Issues and proceedings before the Committee

Consideration of admissibility

12.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

12.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

12.3 The Committee notes the State Party's argument that the author has not exhausted all available domestic remedies. It contends that the author's application for revocation was

pending at the time of submission of the communication to the Committee (see paras. 4.1, 6.1 and 10.2. above), that his subsequent application for refugee status and the refugee status determination procedure also remained pending (see paras. 7.2 and 8.2) and that the proceedings were not unreasonably prolonged (see para. 10.2). The State Party added that Incheon District Court on 4 June 2020 and Seoul High Court on 21 April 2021 had ruled in the author's favour, that the judicial remedies had proved effective as the author had exited the airport transit area on 13 April 2021 and entered the State Party's territory (see para. 8.3) and that the author's claims had been resolved or become moot. The Committee further notes the State Party's assertions that the author only submitted a claim for compensation on 24 April 2023, while his application for refugee status of 24 May 2021 was rejected on 29 August 2023, and that his appeal against the negative decision on his refugee application was pending before the Minister of Justice in October 2023 (see para. 10.3).

12.4 The Committee also notes the author's claim that he has exhausted available domestic remedies, while he primarily submitted that the remedial procedures had been unreasonably prolonged and unlikely to succeed. The author in particular argued that: (a) the rejection of the application for refugee status at the border was not subject to appeal; (b) on 31 March 2020, he filed an administrative litigation at Incheon District Court to request revocation of the refusal of his application for refugee status at the border, which ruled in the author's favour on 4 June 2020, finding that the author should have been entitled to submit a refugee application even as a transit passenger; (c) since the Government appealed against the Incheon District Court finding, the proceedings were protracted and extended the author's transit detention for 14 months until Seoul High Court confirmed the author's claims for revocation of the rejection of his refugee application on 21 April 2021, after the author's release from the airport transit area on 13 April 2021 pursuant to the Incheon High Court order; (d) on 13 July 2020, the author filed a habeas corpus application, which was rejected by Incheon District Court on 19 November 2020; and (e) the author's application for refugee status of 24 May 2021 was rejected on 29 August 2023, his appeal against the negative decision was rejected by the Minister on 24 November 2023, and the appeal before Incheon High Court has remained pending.

12.5 The Committee notes that the author's main claims relate to the absence of access to refugee applications for those in transit, who have not entered the State Party's territory; the absence of opportunity to submit an appeal against the rejection of his application for refugee status at the border; and the legal uncertainty about his rights, while held in the transit zone of the airport, to request a revocation by a court of the rejection of his refugee application, with the alleged lack of judicial precedent. The Committee observes the author's additional claim that he demonstrated due diligence by also pursuing civil remedies, but that the compensation proceedings have been inefficient as his claim for compensation of 24 April 2023 was rejected on 19 June 2024 (see para. 11 above).

12.6 The Committee recalls its jurisprudence that authors are obliged to exhaust all domestic remedies insofar as such remedies appear to be effective in the given case and are de facto available to the author,¹⁵ and that domestic remedies are not considered effective where their application is unreasonably prolonged.¹⁶ In addition, the Committee recalls its long-standing jurisprudence according to which, when examining complaints, the determination of the exhaustion of domestic remedies is made with reference to the time that a communication is being examined.¹⁷

12.7 In the present case, the Committee takes note of the State Party's argument that the author submitted a request for revocation on 31 March 2020, and that he had been gradually using the available domestic remedies following the submission of his initial communication on 1 May 2020 (see para. 4.1 above). However, the Committee notes that the author made all reasonable attempts to remedy the alleged violations at the domestic level, in particular as the author was in the airport transit area in a situation of legal uncertainty as to his status and rights, and while fearing a risk of refoulement at any point, in the absence of automatic suspensive effect of the administrative court litigation. In addition, the Committee observes

¹⁵ See, for example, *Saad v. Libya* (CCPR/C/143/D/3324/2019), para. 7.4.

¹⁶ See, for example, *Rajapakse v. Sri Lanka* (CCPR/C/87/D/1250/2004), paras. 9.4 and 9.5; *Sendic v. Uruguay* (CCPR/C/14/D/63/1979), para. 17; and *Del Cid Gómez v. Panama* (CCPR/C/54/D/473/1991), para. 5.1.

¹⁷ *Lula da Silva v. Brazil* (CCPR/C/134/D/2841/2016 (Final proceedings)), paras. 7.4 and 7.5.

that the author did not have access to an appeal procedure to contest the rejection of his application for refugee status at the border, and could only file an administrative court application for revocation of the rejection of his refugee application on which the courts ruled in the author's favour on 4 June 2020 and 21 April 2021 (see paras. 2.5 and 2.6 and footnote 3 above). The Committee also observes that the author's asylum application, which was eventually accepted by the State Party on 24 May 2021, had no suspensive effect on the author's eventual removal pending the refugee status determination procedure. Moreover, it has not been satisfactorily resolved for more than two years, involving delays in interviews, and the refugee application was rejected on 29 August 2023, and on appeal on 24 November 2023, and the appeal against the negative decision of the Incheon District Court of 26 July 2024 has been pending before Incheon High Court, in the context of administrative lawsuit (see para. 11. above). In parallel, the author's civil compensation claim was denied on 19 June 2024.

12.8 In the light of the above, the Committee considers that the relevant domestic remedies have been either unavailable (e.g. due to lack of the possibility of appealing against rejection of a refugee application by a transit passenger), unreasonably prolonged (e.g. since administrative court litigation for revocation of a rejection is followed by the refugee status determination procedure) or partially effective (e.g. due to delays in the refugee status determination procedure, as admitted, and the absence of suspensive effect, in combination with the low recognition rates for asylum applications, and given that the habeas corpus application and compensation claim proceedings were ineffective in the present case).¹⁸ The Committee therefore concludes that it is not precluded from considering the author's claims by the requirements of article 5 (2) (b) of the Optional Protocol.

12.9 As regards access to asylum, the Committee notes that the author's refugee application, eventually accepted in May 2021, was considered and rejected by the national asylum authorities in 2023, and that the author did not submit information on any procedural irregularities or arbitrariness of his asylum proceedings. The Committee considers that the author's allegations under articles 6 (1) and 7, as considered by the State Party at that time, that he would face a personal and real risk of irreparable harm if he were removed to the Democratic Republic of the Congo, in violation of his rights under the Covenant (substantive elements of the principle of non-refoulement), have not been sufficiently substantiated before the Committee as to the risks of irreparable harm, and therefore declares them inadmissible, pursuant to article 2 of the Optional Protocol. Furthermore, the Committee considers that the author's claims under articles 6 (1) and 7 of the Covenant, in the context of his claims under article 10, have not been sufficiently substantiated as to the possible aggravating risks for his life and dignified treatment, on account of the conditions of detention, and therefore finds them inadmissible, pursuant to article 2 of the Optional Protocol.

12.10 However, the Committee considers that the author's claim under article 7, concerning the impossibility for the author to submit a refugee application while he was in the airport transit area and had not gone through an immigration entry inspection, and his claims under articles 9 (1) and 10 (1), have been sufficiently substantiated for the purposes of admissibility. It therefore declares those claims admissible and proceeds to their consideration on the merits.

Consideration of the merits

13.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

13.2 As regards article 7 of the Covenant, the Committee notes the author's claim that his application for refugee status at the port of entry of the State Party was immediately rejected and not processed, without due consideration of the risk of irreparable harm that he would face if he were to be removed.¹⁹ **The Committee notes the State Party's argument that under article 6 of the Refugee Act, a foreigner can only submit a refugee application at the port of entry, not in the airport transit area. In accordance with its interpretation of article 6 of the Refugee Act, the State Party contends that only a foreigner "undergoing an entry inspection" is entitled to apply for refugee status at the port of entry.** The author objected, however, that the State Party's non-refoulement obligation should not be limited to asylum-seekers who

¹⁸ See, for example, *A.B. and B.D. v. Poland* (CCPR/C/135/D/3017/2017), para. 8.3.

¹⁹ *Ibid.*, para. 9.2.

are “undergoing an entry inspection” but should extend to every individual in the State Party’s territory. Furthermore, the Committee observes that, on 31 March 2020, the author applied for revocation of the refusal to process his refugee application, and that Incheon District Court and Seoul High Court ruled in the author’s favour, on 4 June 2020 and 21 April 2021 respectively, finding that transit passengers should also be entitled to the right to asylum, pursuant to article 6 of the Refugee Act, since airport transit areas are under the jurisdiction of the State Party (see para. 8.4 above). The Committee notes the State Party’s subsequent draft legislative amendments and changes of policies.

13.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, in which it referred to the obligation of States Parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.²⁰ The Committee also recalls that there must be an opportunity for effective, independent review of the decision to expel an individual, with suspensive effect, if there are arguable claims under article 7 of the Covenant.²¹

13.4 In the present case, the Committee observes that the only ground for the State Party to refuse for processing the author’s application for refugee status was that he was not a foreigner “undergoing an entry inspection” pursuant to article 6 (1) of the Refugee Act. While recognizing that the obligations under the Convention relating to the Status of Refugees, of 1951, ratified by the State Party, are implemented through the national legislation of its States Parties, the Committee considers that national laws must observe in parallel the obligations under human rights law, including the Covenant. In view of the above, the Committee considers that the author was denied his right to seek asylum as of 15 February 2020 for the mere fact that he was a transit passenger, and not at a port of entry, that is, at the State Party’s border or on its territory. The Committee therefore finds that the author was deprived of the opportunity to seek protection from refoulement to the Democratic Republic of the Congo, since his application for refugee status was rejected on formal grounds. The Committee therefore concludes that the State Party violated the author’s rights under article 7 of the Covenant.²²

13.5 As regards article 9 (1) of the Covenant, the Committee notes the author’s claim that once the State Party’s immigration authorities had refused to accept his application for refugee status, he was detained starting from 15 February 2020 in the transit area of Incheon International Airport, not on any legal grounds, as no administrative order had been issued, and for an indefinite period and without the possibility of review of the legality of his detention in the transit area. The Committee notes the State Party’s arguments that foreigners whose applications for refugee status are refused for processing at the border are free to leave the State Party; that if they decline to leave the territory, they are obliged to remain on the airport premises but can move around freely in the departure and transit areas; and that the State Party’s authorities did not issue any decision imposing detention on the author in the airport transit area. The Committee also observes that although the author filed an administrative litigation, he was obliged to await the outcomes of the judicial proceedings in the transit area for 14 months, until he was released on 13 April 2021, considering also the rulings of Incheon District Court on 4 June 2020 and of Incheon High Court on 21 April 2021.

13.6 The Committee recalls its jurisprudence that deprivation of liberty involves more a severe restriction of motion within a narrower space, including confinement to a restricted area of an airport,²³ and that such deprivation of personal liberty is without free consent.²⁴ The Committee also observes that the detention of refugees for lengthy and indefinite periods can be arbitrary.²⁵ In the present case, the Committee considers that it is not disputed by the

²⁰ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 12.

²¹ See also *A.B. and B.D. v. Poland*, para. 9.5.

²² *A.B. and B.D. v. Poland*, para. 9.5 (read in conjunction with art. 2 (3) of the Covenant).

²³ See the Committee’s general comment No. 35 (2014), para. 5.

²⁴ *Ibid.*, para. 6.

²⁵ *Bakhtiyari et al. v. Australia* (CCPR/C/79/D/1069/2002) para. 9.3; and *Tran v. Australia* (CCPR/C/143/D/3665/2019), para. 10.4. See also European Court of Human Rights, *Z.A. and Others*

State Party that the Incheon International Airport transit area falls under its jurisdiction.²⁶ The Committee also notes the author's claim that he was subjected to de facto detention for 14 months in this transit area, without possibility of exiting the airport in other way than leaving the State Party, and that his habeas corpus application was ineffective and he secured his release from the transit area only through administrative litigation in the alternative. The Committee finds, therefore, that the author was detained in the airport transit area without legal grounds, as no administrative order was issued against him; for an indefinite period of time and without appropriate justification, as the author did not know from the outset for how long he would be deprived of his liberty; and without establishing the proportionality or necessity of such a measure, as he was de facto expected to leave the transit area for another country, which has amounted to arbitrariness in the circumstances of the case – thereby violating his rights under article 9 (1) of the Covenant.

13.7 Regarding article 10 (1), the Committee notes the author's assertion that he was detained in inhumane and unsanitary conditions in the transit area during the COVID-19 pandemic, and that he was held without any protective measures amid the COVID-19 pandemic. It also notes the State Party's objection that the author was provided with food, accommodation, access to medical care and sanitary facilities, as well as legal counselling (see paras. 6.5, 7.7 and 10.8 above). However, the Committee observes that the author was exposed during the COVID-19 pandemic to unsanitary conditions, and lack of sufficient accommodation, adequate food and medicines as well as non-stop light for 24 hours, until he was released on 13 April 2021.²⁷ The Committee therefore finds that the author's rights under article 10 (1) of the Covenant have been violated.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State Party has violated the author's rights under articles 7, 9 (1) and 10 (1) of the Covenant.

15. Pursuant to article 2 (3) (a) of the Covenant, the State Party is under an obligation to provide the author 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 appropriate compensation for the material and moral harm suffered by the author. The State Party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

16. Bearing in mind that, by becoming a Party to the Optional Protocol, the State Party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State Party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State Party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State Party is also requested to publish the present Views and to have them widely disseminated in the language of the State Party.

v. Russia (applications No. 61411/15, No. 61420/15, No. 61427/15 and No. 3028/16), Grand Chamber judgment of 21 November 2019, paras. 164–171 and 187–197.

²⁶ European Court of Human Rights, *Z.A. and Others v. Russia* (applications No. 61411/15, No. 61420/15, No. 61427/15 and No. 3028/16), Grand Chamber judgment of 21 November 2019, paras. 129–134.

²⁷ See the Committee's general comment No. 21 (2017), para. 3, regarding safeguards for individuals in vulnerable situations.