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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session, the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the Covenant. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 106 (3) of the Committee's rules of procedure. In the light of the high number of Views on which follow-up is required and the limited resources that the secretariat can devote to follow-up to Views, it has been and continues to be impossible to ensure systematic, timely and comprehensive follow-up to all cases, particularly given the applicable word limitations. The present report is therefore based exclusively on the information available, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. Under the current methodology, unless the Committee reaches the determination that its Views have been implemented satisfactorily and closes a case, the case remains under the active scrutiny of the Committee. In the light of the small number of cases that have been closed and the growing number of cases the Committee has adopted, which thus require follow-up, the overall number of cases under the follow-up procedure continues to increase steadily. Therefore, in an attempt to rationalize the work on follow-up, the Special Rapporteur for follow-up on Views proposes adjusting the methodology for the preparation of the reports and the status of cases by establishing a list of priorities based on objective criteria. The Special Rapporteur thus proposes that, in principle, the Committee: (a) close cases in which it has determined that implementation has been satisfactory or partially satisfactory; (b) retain active those cases on which it needs to maintain dialogue; or (c) suspend cases for which no further information has been provided in the past five years either by the State party concerned or by the author(s) and/or counsel, moving them to a separate category of "cases without sufficient information on satisfactory implementation". The Committee would not be expected to ensure any proactive follow-up on such cases, unless one of the parties submitted an update. Priority and focus would be given to recent cases and cases on which one or both parties were regularly providing the Committee with information. The Special Rapporteur is hopeful that this adjustment would significantly reduce the number of cases for which proactive follow-up is required. In addition, the Special Rapporteur proposes developing a strategy to ensure coordination with the list of States parties that are due to attend Committee meetings during which their reports will be examined. When relevant, a country page on follow-up to Views would be prepared and posted on the Committee website. Those country pages would complement the global rolling list of cases subject to the active follow-up procedure. The global list and the country pages would be available on the Committee website and would be updated regularly.

* The Committee adopted the present document at its 129th session (29 June–24 July 2020), having postponed its consideration owing to circumstances beyond the Committee's control.

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3. At the end of its 127th session, the Committee had concluded that there had been a violation of the Covenant in 1,157 out of the 1,396 Views it had adopted since 1979.

4. At its 109th session, the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.

5. At its 118th session (17 October–4 November 2016), the Committee decided to revise its assessment criteria.

Assessment criteria (as revised during the 118th session)

Assessment of replies:

A **Reply/action largely satisfactory**: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B **Reply/action partially satisfactory**: The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.

C **Reply/action not satisfactory**: A response has been received, but the action taken or information provided by the State party is not relevant or does not implement the recommendation.

D **No cooperation with the Committee**: No follow-up report has been received after the reminder(s).

E **Information or measures taken are contrary to or reflect rejection of the recommendation.**

6. At its 121st session, on 9 November 2017, the Committee decided to revise its methodology and procedure for monitoring follow-up on its Views.

Decisions taken:

- Grading will no longer be applied in cases where the Views have been merely published and/or circulated;
- Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views;
- The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply by the State party and information provided by the author.

B. Follow-up information received and processed up until February 2020

1. Ecuador

Communication No. 2290/2013, ***Fofana***

Views adopted:	23 October 2018
Violation:	Article 9 (1), (4) and (5)
Remedy:	(a) Expunge the author's criminal record; (b) provide him with full reparation, including financial compensation; and (c) take all appropriate steps to prevent similar violations in the future, including by adopting institutional measures.
Subject matter:	Arbitrary detention of a person with refugee status
Previous follow-up information:	None

Submission from the State party: 27 May 2019[1]

The State party acknowledges its obligations to expunge the author's criminal record and to take steps to prevent similar violations in the future, including those aimed at strengthening institutional capacity so that refugees and asylum-seekers will no longer be subjected to arbitrary detention.

On 2 May 2019, the Directorate for Human Rights and Gender Equality requested the national police authorities to delete the criminal records registered in the author's name, both in physical archives and in the computer system. On 24 May 2019, the police authorities confirmed that the relevant records had been expunged. The State party emphasizes that a data verification procedure was then conducted, after which the Ministry of the Interior issued a certificate attesting the lack of a criminal record in the author's name in the computer database of the national police. The State party therefore concludes that it has fully implemented the Committee's Views regarding the elimination of the author's criminal record.

In August 2018, the Office of the Under-Secretary for Migration of the Ministry of the Interior, at the request of the Directorate for Human Rights and Gender Equality, convened a workshop on human rights focusing on human mobility, targeted at civil servants working at, for example, immigration control posts and international and regional airports. It was attended by a total of 114 employees.

Submission from the author's counsel: 5 December 2019[2]

The author's counsel expresses full satisfaction with the State party's compliance with the Committee's first recommendation, as the entire criminal record registered in the author's name was deleted from the computerized system of the national police. With regard to the second recommendation, although the State party expressed its willingness to cooperate and considered providing the author with adequate compensation, no payment had been made to date. With regard to the last recommendation, the author's counsel challenges the relevance of the steps taken by the State party, as the training provided for civil servants took place before the Committee issued its Views. The author's counsel therefore concludes that, while the State party has satisfactorily implemented the first recommendation, little progress has been made towards implementing the other two recommendations.

Committee's assessment:

(a) Expunging the author's criminal records: A;

(b) Comprehensive reparation: C;

(c) Non-repetition, including adopting institutional measures: C.

Committee's decision: Follow-up dialogue ongoing.

2. Finland

Communication No. 2668/2015, *Sanila-Aikio*

Views adopted:	1 November 2018
Violation:	Article 25, read alone and in conjunction with article 27
Remedy:	(a) Provide the author with an effective remedy and full reparation; (b) review section 3 of the Act on the Sami Parliament with a view to ensuring that the criteria for eligibility to vote in Sami Parliament elections are defined and applied in a manner that respects the right of the Sami people to exercise their internal self-determination, in accordance with articles 25 and 27 of

[1] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 6 August 2019.

[2] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 17 December 2019.

	the Covenant; and (c) take all steps necessary to prevent similar violations in the future.
Subject matter:	Right to vote in elections to the Sami Parliament
Previous follow-up information:	None

Submission from the State party: 31 July 2019[3]

The State party submits that the Finnish and North Sami translations of the Committee's Views have been disseminated to all relevant authorities, who discussed and examined them in a cross-sectoral meeting held on 14 June 2019, and also in a written procedure.

Moreover, on 3 April 2019, the Executive Board of the Sami Parliament, acting on the Committee's Views and on the basis of section 63 (annulment) of the Administrative Judicial Procedure Act,[4] requested the Supreme Administrative Court to annul its decisions of 26 November 2011 and 30 September 2015 concerning 97 individuals who are currently on the electoral roll. On 5 July 2019, the Court rejected that request, having concluded that it did not contain any of the grounds referred to in that section of the Act. It found that changes in case law or the interpretation of law could not be considered grounds that could be taken into account as new evidence within the meaning of section 63 (1) (3) of the Act. Therefore, the Committee's Views did not constitute new evidence that would justify annulling the Court's decisions. The Court pointed out that, for a final decision to be annulled on the grounds of a manifestly erroneous application of the law, under section 63 (1) (2) of the Act, the application of the law was required to have been clearly and indisputably in conflict with the legal status prevailing at the time and not open to interpretation. In that regard, the Court observed that, before the adoption of the Views, the case law of international monitoring bodies concerning the weight of self-identification balanced against that of group identification had been unclear in the context of determining who was Sami. It could thus not be concluded that the Court, at the time of making the decisions in question, applied the law erroneously in the light of the available case law concerning international law.

On 1 July 2019, the Electoral Committee of the Sami Parliament removed the 97 individuals from the electoral roll. The Government has since been approached by some of those persons, who have expressed concern at the fact that they were not heard in the proceedings before the Committee.

With regard to the Committee's recommendation to review section 3 of the Act on the Sami Parliament, taking into consideration the timing of the elections of the Sami Parliament, scheduled to be held in September 2019, the State party concluded that there was insufficient time to review and where necessary amend the relevant legislation before the elections.

Submission from the author: 24 October 2019[5]

The author expresses her disappointment at the State party's failure to implement the Committee's Views within the six-month deadline and questions the good faith of the State

[3] The submission was acknowledged to the State party and transmitted to the author for comments on 4 September 2019.

[4] Section 63 (1) of the Act provides that "a decision may be annulled: (1) if a procedural error which may have had a relevant effect on the decision has been committed; (2) if the decision is based on manifestly erroneous application of the law or on an error which may have had an essential effect on the decision; or (3) if new evidence which could have had a relevant effect on the decision appears and it is not the fault of the applicant that the evidence was not presented in time". Section 63 (2) provides that "The decision shall not be annulled, unless it violates the right of an individual or unless it is deemed that it is in the public interest that the decision be annulled". Section 63 (3) provides that "No annulment shall be applied for if a material tax appeal or a procedural complaint can be lodged against the decision on the same basis".

[5] The submission was acknowledged to the author and transmitted to the State party for information on 22 November 2019.

party to do so, considering some of the language and information contained in its submission.[6]

She notes that the State party cites a statement published on 21 February 2019 by four members of the current Sami Parliament, according to which the Committee's Views and the grounds presented in support of it were biased and based on inaccurate information, and that the plenum of the Sami Parliament of Finland had not dealt with the matter. She asserts that, by relying on the statement of 4 out of the 21 members of the plenum, the State party appears to be siding with them in contesting her authority to represent the Sami. She recalls that she acted as the elected President of the Sami Parliament with the explicit authorization of its Executive Board, which is the competent authority to decide on such matters. In addition, she notes that the State party appears to be criticizing the Committee for not hearing third parties in the consideration of the communication. She recalls that any case of international human rights law should be adjudicated between the alleged victim of the violation and the respective State party.

She contends that the State party's submission misrepresents the rulings made by the Supreme Administrative Court in 2015. The State party alleged that the appellants in those cases would, in principle, have met the criteria set out in section 3 (2) of the Act on the Sami Parliament whereas in fact, the Court explicitly stated that in the majority of cases, none of the objective criteria had been met, but that the appellants were nevertheless ordered to be included in the electoral roll on the basis of the Court's own "overall consideration". She claims that the misrepresentation of the Court's rulings has effects beyond the implementation of the Committee's Views on the Sami Parliament elections of 2019. She informs the Committee that new communications have been submitted on this matter.

Considering the exhaustion of judicial avenues to implement the Committee's Views, the author requests the Committee to urge the State party to take immediate legislative action to amend section 3 of the Act on the Sami Parliament, in agreement with the Sami Parliament and in a manner that respects the Sami people's right to internal self-determination and prevents any future violations of the Covenant by the State party.

Committee's assessment:

(a) Full reparation: C;

(b) Review of section 3 of the Act on the Sami Parliament: C;

(c) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

3. Mauritius

Communication No. 1744/2007, *Narrain et al.*

Views adopted:	27 July 2012
Violation:	Article 25 (b)
Remedy:	(a) Provide the authors with an effective remedy, including compensation in the form of reimbursement of any legal expenses incurred in the litigation of the case; (b) update the 1972 census with regard to community affiliation, and reconsider whether the community-based electoral system is still necessary; and (c) avoid similar violations in the future.

[6] The author points out that the "representatives of the Inari Sami Association and the Inarinmaa Lapland Village Association" with whom the State party alleges it held a meeting on 11 June 2019 do not in fact represent the traditional group of Inari Sami.

Subject matter:	Requirement for prospective candidates of elections to the National Assembly to identify themselves as members of one of the four categories of the Mauritian population
Previous follow-up information:	A/68/40 (Vol. I), pp. 176–177, and A/69/40 (Vol. I), pp. 200–201.

Submission from the authors' counsel: 6 November 2019[7]

The authors' counsel submits that the State party failed to provide an effective and enforceable remedy for the violation of article 25 (b) of the Covenant, noting that, on 14 July 2014, the State party amended its Constitution to comply with the Committee's Views by prohibiting the disqualification of an otherwise qualified candidate at a general election based upon the candidate's failure to classify him or herself in one of the categories based on ethnicity or religion. The authors' counsel claims, however, that the constitutional amendment was temporary, designed to apply only to the first general election after it came into force.[8] Although the amendment was effective in that it applied to the general election held on 10 December 2014, it was no longer applicable thereafter. The authors' counsel has since been urging the State party to provide an effective remedy to ensure the protection of their rights under article 25 (b) of the Covenant.

The authors' counsel notes that there has been no general reform of the electoral system in the State party, given that the controversial constitutional amendment bill on electoral reform that was introduced in the parliament in December 2016 was never put to the vote. The authors' counsel also notes that the nomination day, on 22 October 2019, and the general election, on 7 November 2019, were scheduled without any effective or enforceable remedy to avoid a potential breach of article 25 (b) of the Covenant.

The authors' counsel also points out that the National Assembly Elections (Amendment) Regulations 2019 contradict the State party's obligations under article 25 (b) of the Covenant and the Committee's recommendation that it reconsider whether the community-based electoral system is still necessary. The Regulations disqualify otherwise qualified candidates at a general election for their failure to classify themselves in certain ethnic and religious categories.

The authors' counsel therefore claims that the general election of 7 November 2019 cannot be considered democratic, free and fair within the meaning of the Covenant to the extent that it was held in the absence of candidates who were disqualified in October 2019 by virtue of those Regulations. The Regulations affected numerous candidates, including some of the authors, who were disqualified from standing as candidates at the general election owing to their non-compliance with the compulsory classification.[9]

Submission from the State party: 6 January 2020[10]

In July 2014, the parliament passed the Constitution (Declaration of Community) (Temporary Provisions) Bill, which removed the mandatory requirement for prospective candidates in a general election to declare to which community they belong. However, the Bill applied only to the first general election held after the enactment of the Act. For subsequent general elections, candidates would still have to declare which community they belonged to if no change were made to the law.

After assuming office in 2014, the Government reiterated its pledge to reform the national electoral system and announced reform measures in its 2015–2019 programme, as it was

[7] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 8 November 2019.

[8] Article 3 of the Constitution (Declaration of Community) (Temporary Provisions) Bill (2014) provides that: "This Act shall only apply to the first general election after the commencement of this Act".

[9] The authors note that, in an oral judgment on 26 October 2019, the Supreme Court endorsed the validity of disqualification on the grounds of those Regulations.

[10] The submission was acknowledged to the State party and transmitted to the authors for information on 24 January 2020.

aware of the need to remove the requirement to declare affiliation with a community as a prerequisite for nomination as a candidate in a general election. Accordingly, a ministerial committee was set up in January 2016 to make proposals for electoral reform, particularly with regard to that mandatory declaration. The Government approved the ministerial committee's recommendations, then presented them to the public in accordance with its consultative and participatory approach on fundamental issues touching upon the basic tenets of national democracy. Moreover, a consultative paper on the proposed electoral reform was circulated to all political party leaders and independent members of the National Assembly and was posted on the website of the Prime Minister's Office to give it wide publicity. In so doing, the Government aimed to trigger constructive debate on the proposals and encourage political parties and the public to submit their views and suggestions. When the consultative process was over, the Government introduced the Constitution (Amendment) Bill embodying its electoral reform proposals to the National Assembly on 4 December 2018. The Bill made provision for the so-called best loser system,[11] to be subsumed in a new dispensation, thus obviating the need for prospective candidates to declare their community on their nomination paper. Under the Constitution, in order to be passed by the National Assembly, a bill has to be supported at the final vote in the Assembly by no fewer than three quarters of the members. The Constitution (Amendment) Bill was unfortunately not supported by opposition parties and, in the absence of the required majority, was not adopted. Consequently, in the National Assembly elections held in 2019, prospective candidates had to comply with paragraph 3 of the first schedule to the Constitution[12] and Regulation 12 (4) of the National Assembly Elections Regulations 2014, as amended by the National Assembly Elections (Amendment) Regulations 2019.[13] The State party notes that the authors' nomination papers were considered invalid, as they failed to make their declaration as required under the Constitution and those Regulations.

The State party also notes that the authors challenged the decision to reject their nomination papers and sought redress before the Supreme Court, which set aside the applications on the ground that the impugned decision to invalidate and reject the applicants' nomination papers was legally in order and unimpeachable for unconstitutionality. Nevertheless, the State party claims that it remains committed to introducing appropriate measures in order to abolish mandatory declaration of community.

Committee's assessment:

(a) Effective remedy, including financial compensation: B;

(b) Non-repetition, including revision of the electoral system: B.

Committee's decision: Follow-up dialogue ongoing.

4. New Zealand

Communication No. 2502/2014, *Miller and Carroll*

Views adopted:	7 November 2017
Violation:	Articles 9 (1) and (4) and 10 (3)
Remedy:	(a) Provide the authors with an effective remedy in the form of full reparation; (b) immediately reconsider the authors' continued detention and take steps to facilitate their release; and (c) take all steps necessary to prevent

[11] A system used to ensure that minority ethnic groups are equitably represented in the parliament by allocating additional seats to candidates from minority groups. In addition to the 62 directly elected members, the Constitution provides for eight additional seats to be allocated to the "best losers", who are candidates from their respective ethnic groups, namely minorities.

[12] The paragraph requires all candidates at any general election of National Assembly members to declare the community to which they belong so that the community may be indicated in a published notice of their nomination.

[13] Regulation 12 (4) provides that, in the case of a general election, candidate are all to make and indicate on their nomination papers a declaration as to whether they belong to the Hindu, Muslim, Sino-Mauritian or General Population community.

similar violations in the future, including by reviewing its legislation to ensure full enjoyment of the rights under articles 9 (1) and (4) and 10 (3) of the Covenant.

Subject matter: Continued detention after serving punitive sentences

Previous follow-up information: None

Submission from the State party: 26 November 2018[14]

The State party informs the Committee that the status of both authors has been reviewed by the Parole Board since the transmittal of the Committee's Views in April 2018. While they both remain in prison on a sentence of preventive detention, they are able to seek access to the full range of rehabilitative and reintegrative programmes that are available (subject to the eligibility criteria for each programme). That includes opportunities to seek placement in programmes and units that offer different regimes to those offered elsewhere in the prison system, such as self-care units, which are small-scale accommodation units offering an environment akin to residential accommodation and that provide opportunities for reintegration for long-serving prisoners.[15]

Mr. Miller has lived in an internal self-care unit since March 2016 and currently participates in work and educational programmes inside the prison. He has also participated in day release into the community, accompanied by prison staff. He appeared before the Parole Board on 7 September 2016, 1 August 2017, 8 February 2018 and 31 May 2018, and was declined parole each time. At the hearing held in May 2018, the Board reiterated a comment from its previous decision with regard to his "apparent complete lack of understanding of his risk". On the basis of the information available to it, the Board was not, therefore, satisfied that the risk that he would commit more sexual offences was anything other than high, or indeed that he truly understood that risk. He was to appear before the Board again no later than May 2019, at which time an updated psychological assessment report would be required.

Mr. Carroll has also lived in an internal self-care unit since September 2018. He was approved for day release from prison to attend an external self-care unit outside the prison, during which time he would be subjected to electronic monitoring.[16] He works within the prison and has completed a tertiary qualification and a therapeutic programme for adult sex offenders. He also participated in 11 individual treatment sessions with a clinical psychologist between 3 July 2017 and 26 September 2018. He appeared before the Parole Board in 2016 and 2018 and was declined parole. The Board noted that the reintegration plans at that time did not attend to his risk or mitigate that risk. The author was to appear before the Board again no later than May 2019.

The State party submits that, in the assessment made by the Parole Board, it is not possible at the current time to release either author from preventive detention. In both cases, the Board concluded that the statutory threshold for release had not been met, and it was not satisfied that the authors would not pose an undue risk to the safety of the community if released. Given the determinations of the Board after consideration of the facts of each author's case, no lesser form of restriction could be placed upon either of the authors.

To prevent future violations, the State party has asked the Department of Corrections to provide advice on how the operation and design of prisons could be reformed over the longer term to maximize rehabilitation and reintegration opportunities for all prisoners.

With regard to legislative reform, the State party submits that, in July 2018, the Government launched an initiative entitled Safe and Effective Justice, which seeks to transform the

[14] The submission was acknowledged to the State party and sent to the authors for comments on 8 January 2019.

[15] The objective of the units is to encourage greater personal responsibility and self-reliance. While regimes differ between prisons, residents tend to be permitted to move freely around self-care units until 10 p.m. and can structure their daily activities accordingly. Self-care units provide scope for residents to prepare meals, develop skills and participate in daily life in the residence.

[16] The unit provides an environment centred on Indigenous cultural principles to help persons in prison train for employment and form supportive networks with tribal groupings, smaller tribal groupings and community organizations, while also strengthening their cultural identity.

criminal justice system so that it focuses better on supporting the well-being of all people affected by crime. The initiative constitutes an opportunity to review the legislative framework for preventive detention and release on parole in the light of the Committee's Views. It involves a phased plan of work through to June 2020, encompassing an examination of current sentencing and parole procedure, including with regard to existing arrangements for offenders who pose a serious and continuing risk to public safety. Although there is no specific focus on the sentence of preventive detention, the programme is likely to involve consideration of the appropriateness and effectiveness of the sentence and orders.

Submission from the authors: 25 June 2019[17]

The authors submit that, while recognizing the need for some change, the State party has offered them no relief and that, despite the adoption of the Committee's Views, the authors remain arbitrarily detained. They recall that the Committee found that the Parole Board did not, for the purpose of enabling the authors to challenge the lawfulness of their detention, constitute a court within the meaning of article 9 (4) of the Covenant and that the authors' rights to appeal the Board's decision to the ordinary courts did not meet the standard required by article 9 (4). The State party contends, however, that it is sufficient that the author's detention be the subject of a periodic review by the Board and relies on its assessment of the facts of each author's case to establish the lawfulness of each author's detention. The authors submit that the State party fails to understand that a domestically lawful detention can still be arbitrary in the light of international human rights law, in accordance with the Committee's Views.[18]

Furthermore, the authors claim that the State party's response to future violations is meaningless in terms of actual immediate remedy for either of them. With regard to the launch of the Safe and Effective Justice initiative, they note that a proposal for legislative reform is not likely prior to June 2020. Considering that the term of office of the current Government ends in September 2020 and that the opposition holds drastically different views on penal reform, the fate of the initiative will depend on the forthcoming elections. Meanwhile, the authors will continue to be held in arbitrary detention.

Committee's assessment:

(a) Full reparation: C;

(b) Reconsideration of the authors' detention and facilitation of their release: C;

(c) Non-repetition, including review of legislation: B.

Committee's decision: Follow-up dialogue ongoing.

5. Ukraine

Communication No. 2250/2013, *Katashynskyi*

Views adopted:	25 July 2018
Violation:	Article 25, read alone and in conjunction with article 2 (3)
Remedy:	(a) Provide the author with an effective remedy, including by adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs, also with regard to non-pecuniary losses incurred by the author; and (b) take all steps necessary to prevent similar violations in the future.
Subject matter:	Violation of the right and opportunity to take part in the conduct of public affairs and to be elected at genuine periodic elections

[17] The submission was acknowledged to the authors and transmitted to the State party for information on 31 October 2019.

[18] The authors refer to European Court of Human Rights, *James, Wells and Lee v. the United Kingdom*, Applications Nos. 25119/09, 57715/09 and 57877/09, Judgment of 18 September 2012.

Previous follow-up information: None

Submission from the State party: 1 March 2019[19]

The State party submits that the Committee's Views were translated into Ukrainian by the Ministry of Justice, the main central executive body responsible for the fulfilment of the international legal obligations of Ukraine under the Covenant. The Views were posted on the Ministry's official website and then forwarded to the Central Electoral Commission and the Supreme Court.

The procedure for holding elections and referendums is determined exclusively by Ukrainian legislation, including in the Autonomous Republic of Crimea.[20] The procedure for elections in Crimea is established by Law No. 595 of 14 July 2015. The polling stations and the territorial electoral commissions are in charge of organizing and holding elections at the local level and are required to act in accordance with the Constitution and the laws of Ukraine. Nevertheless, that legislation does not envisage a procedure for the determination of the results of local elections, nor a procedure in the event of loss of ballots.

The Central Electoral Commission and territorial elections commissions are in charge of ensuring the protection of electoral documents. The Commission provides advisory and methodological support for the application of legislation to territorial electoral commissions. It adopted resolution No. 355 of 21 September 2015 on the procedure to count votes at polling stations during local elections in Crimea. According to the national legislation, election ballots are documents of strict accountability and are therefore accorded a high level of protection.

The electoral commission of Crimea is in charge of protecting ballot papers. All electoral documents are to be kept on the premises of the electoral commission in a closed safe (metal cabinet), sealed with a tape bearing the signatures of all those present at the commission meeting. The safe is under constant police surveillance and, if so required by the Central Electoral Commission, of Ukrainian security services officers. If the seal is damaged, the chairperson of the electoral commission immediately informs the police and the higher-level electoral commission. In such a case, the safe is opened and the members of the electoral commission check the ballot papers and count them to check against the number gathered at the polling station. A report is prepared describing the reason for opening the safe and, if applicable, any discrepancy in ballot numbers, which is recorded in the minutes of the electoral commission meeting.

The electoral commission is in charge of organizing the vote. The safe is opened during a meeting no earlier than 45 minutes before the beginning of the vote. The chairperson of the commission announces the number of ballot papers and sorts them by electoral district. The transmission of ballot papers to the polling station is recorded at the territorial level and also by the Central Electoral Commission. In the event of damage to the ballot box during a vote, the box is sealed and stored in the polling station until the end of the vote.

Central Electoral Commission resolution No. 182 of 25 August 2015 establishes the procedure for the transportation of electoral documents for elections in Crimea. It provides that the members of the territorial electoral commission be accompanied by employees of the internal affairs bodies of Ukraine and, if required, by officers of Ukrainian security services. After the official publication of results, the electoral documentation is then sent to the local archival institution on the basis of a list established by the Central Electoral Commission, in accordance with Central Electoral Commission resolution No. 485 of 21 October 2015. The documents are archived for five years after official publication, then destroyed in accordance with the established procedure. Central Electoral Commission resolution No. 365 of 21 September 2015 establishes the equal application of those legal provisions to the election of deputies to the Verkhovna Rada in Crimea.

Complaints can be lodged before the electoral commission regarding the electoral process. If the complaint is examined by the administrative court, the electoral commission will not

[19] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 10 September 2019.

[20] See General Assembly resolution 68/262 on the territorial integrity of Ukraine.

consider it. The Code of Administrative Justice, as amended by law No. 2147 of 3 October 2017, establishes a procedure for judicial appeal of decisions by the electoral commission. For electoral matters, the Supreme Court rules as the court of first instance and the Grand Chamber thereof as an appellate court. The decisions taken by territorial electoral commissions may be appealed before administrative courts, then before the relevant administrative courts of appeal. The State party submits that, since international standards guarantee the right of appeal only if national legislation establishes such a right, it is a non-autonomous requirement, and the State party complies with those international standards. The Committee's Views have been transmitted to all courts of appeal.

The law establishes disciplinary, administrative and criminal sanctions for those violating legislation on local elections. The second reading of the draft electoral code, aimed at harmonizing all electoral procedures, is currently under way. The State party therefore submits that, since the adoption of the Committee's Views on Mr. Katashynskyi's case, progress has been made regarding appeals against decisions made by electoral commissions and with regard to liability for electoral offences.

Submission from the author's counsel: 10 November 2019[21]

The author's counsel submits that, despite the Committee's Views, the State party has not taken any measures to provide the author with adequate compensation or appropriate measures of satisfaction in connection with the violation of his rights. In particular, the State party has ignored the Committee's recommendation concerning the reimbursement of legal costs and compensation for non-pecuniary losses incurred by the author.

Moreover, despite the Committee's recommendation that the State party take all steps necessary to prevent similar violations in the future, no such measures have been taken and the current legislation, which does not regulate the consequences of the loss (theft) of ballot papers, remains in force.

While the State party did indeed publish a Ukrainian translation of the Committee's Views and subsequently transmitted it to the Central Electoral Commission and the Supreme Court, given that it published only the operative part of the Views, entitled "consideration of the merits", the translated version of the Views lacks the factual background and the details of the case. Consequently, the facts of the case on the basis of which the Committee found a violation of the author's rights remain hidden. Furthermore, the State party deliberately withheld the entire text of the Views by publishing only the section on the consideration of the merits. The lack of references in that document undermines the understanding of the Views, making it almost impossible to comprehend the gist of the Committee's decision in the author's case. Therefore, it is highly questionable whether the information provided by the State party is adequate to inform all interested persons about the outcome of the author's case.

Furthermore, the author has not been provided with the opportunity to seek a review of the decisions made in his case. The author's counsel argues that there is no reasonable prospect of success in enforcing the Committee's Views, recalling in that regard the decision of the Grand Chamber of the Supreme Court of Ukraine dated 18 September 2018 concerning the Committee's Views in *Pustovoit v. Ukraine*.[22] Pursuant to article 55 of the Constitution of Ukraine, everyone has the right, after having exhausted all domestic remedies, to request protection of his or her rights and freedoms before the relevant international judicial institutions or the relevant bodies of international organizations of which Ukraine is a member or a participant. The legislator thus clearly distinguished between international judicial institutions and bodies of international organizations. Pursuant to article 400-12 of the 1960 Code of Criminal Procedure, a decision of an international judicial institution recognized by Ukraine constitutes one of the grounds for review of decisions made by national courts. In its decision dated 18 September 2018, the Grand Chamber of the Supreme

[21] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 26 November 2019.

[22] CCPR/C/110/D/1405/2005.

Court of Ukraine recalled, however, that, by its legal nature, the Human Rights Committee is an organ of an international organization and not an international judicial institution.

> The Court also notes that, in line with the first Optional Protocol to the Covenant, the Human Rights Committee considers individual complaints against State parties. After having examined a complaint, the Committee renders its decisions in the form of Views. The Court notes, however, that the Committee is not vested with the authority to make legally binding decisions, and the Committee's constituent documents do not provide for legal consequences for States once a violation of human rights has been established. Therefore, the Committee's Views constitute mere recommendations for the State, which has final discretion on whether to implement them.
>
> Consequently, having analysed the above-mentioned international legal norms, the Court arrives at the conclusion that the Human Rights Committee is not an international judicial institution. Its Views are therefore not judicial decisions in their form or content and, from a legal point of view, they are not binding but rather recommendatory in nature.

The author's counsel therefore submits that measures should be taken at the domestic level, including a review of the legislation and/or of law enforcement practices, in order to remedy the rights of victims of human rights violations. The author's counsel requests the Committee's assistance in facilitating implementation by the State party of its Views in Mr. Katashynskyi's case.

Committee's assessment:

(a) Adequate compensation and appropriate measures of satisfaction: C;

(b) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing. The Committee will request a meeting with a representative of the State party during one its future sessions.

6. Uzbekistan

Communication No. 1769/2008, *Ismailov*

Views adopted:	25 March 2011
Violation:	Articles 9 (2) and (3) and 14 (3) (b), (d), (e) and (g)
Remedy:	(a) Provide the victim with an effective remedy, including considering a retrial in compliance with all guarantees enshrined in the Covenant, or release; (b) provide him with appropriate reparation, including compensation; and (c) take steps to prevent similar violations in the future.
Subject matter:	Arbitrary detention and violation of the fair trial guarantees in criminal proceedings

Previous follow-up information: A/69/40 (Vol. I), p. 226, and CCPR/C/113/3 and Corr.1

Submissions from the author and the victim's mother: 11 June and 7 October 2017 and 5 May[23] and 11 August 2019[24]

The author submits that the State party has still taken no measures to give effect to the Committee's Views and that numerous appeals to the domestic authorities requesting compliance with the Views and reconsideration of Mr. Ismailov's criminal case have been unsuccessful. Furthermore, he continues to be subjected to frequent and unsubstantiated accusations of systematically breaking the internal rules in colony UYa 64/21, which makes him ineligible for the amnesties regularly declared by the domestic authorities. The author

[23] The submissions dated 11 June and 7 October 2017 and 5 May 2019 were acknowledged to the author and the victim's mother and transmitted to the State party for comments on 7 May 2019.

[24] The submission dated 11 August 2019 was acknowledged to the victim's mother on 1 October 2019.

refers, in particular, to the responses received from the Military Prosecutor's Office on 4 May, 13 October and 21 October 2016, 13 April 2017, 19 February and 28 September 2018; from the Prosecutor General's Office on 19 February 2019; from Tashkent specialized prosecutor's office on 17 February 2019; from the Supreme Court on 5 November 2015, 29 July 2016, 12 September 2017 and 15 January, 17 September and 1 November 2018; from the Department on the Execution of Criminal Punishments on 21 February 2017; and from the Ministry of Defence on 18 September 2018.

Pursuant to the ruling of Zangiota Regional Court of 13 February 2019, Mr. Ismailov was transferred to a minimum security prison, referred to as a colony/settlement, to serve the remainder of his sentence, where he was again repeatedly subjected to disciplinary punishment due to his alleged breach of internal rules.

The author submits that Mr. Ismailov is ineligible for a presidential pardon, since one of the mandatory requirements for such a pardon is an admission of guilt by a convicted person and a waiver of any demands for the reconsideration of his or her criminal case in the future. Mr. Ismailov refuses to admit to a crime that he did not commit.

Submission from the State party: 20 August 2019[25]

With regard to the possibility of retrial in Mr. Ismailov's case, the State party provides a detailed explanation of the modalities of the supervisory review procedure pursuant to article 510 of the Code of Criminal Procedure and submits that this domestic remedy remains available to him.

The State party recalls that Mr. Ismailov was found guilty of having committed offences under article 157 (1) (treason) and 248 (1) (illegal ammunition storage) of the Criminal Code and sentenced to 20 years' imprisonment. Since he has not been acquitted or rehabilitated pursuant to article 301 of the Code of Criminal Procedure, there are no grounds to justify the payment of compensation to Mr. Ismailov on the basis of the procedure established in article 304 of that Code. Therefore, there are equally no grounds for the State party to comply with the Committee's Views with respect to the provision of appropriate reparation and compensation.

Submissions from the author: 12 October 2019[26] and 19 February 2020[27]

The author submits that she has been trying to have Mr. Ismailov's criminal case reviewed by the domestic authorities since 2007, to no avail. In January 2019, his case was accepted for consideration once again by the Supreme Court under the supervisory review procedure. However, on 15 September 2019, the Supreme Court decided that there were no grounds to justify reconsideration of his case. The author adds that, notwithstanding the formalistic responses she has received from the domestic authorities and courts to her numerous appeals and complaints, Mr. Ismailov's case effectively remains unexamined on the merits, contrary to the Committee's recommendation in its Views. She refers particularly to the responses received from the Military Prosecutor's Office of Uzbekistan on 29 August 2018 and 15 March, 6 May and 21 June 2019, and from the Prosecutor General's Office on 9 March, 22 April and 17 June 2019. She also notes the inconsistencies in the responses received from the domestic authorities and courts in relation to his case.

With reference to article 302 of the Code of Criminal Procedure, the author submits that it is impossible for Mr. Ismailov to receive compensation for the violation of his rights found by the Committee in its Views, since the State party continues to consider him a convicted criminal. On the basis of the State party's submission, the author concludes that it does not intend to implement any of the Committee's Views and that it would comply with them only if the individuals concerned had been acquitted by the State party's courts. However, despite conclusive evidence presented to the domestic authorities and courts by Mr. Ismailov's

[25] The submission was acknowledged to the State party and transmitted to the author for comments on 26 August 2019.

[26] The submission was acknowledged to the author and transmitted to the State party for information on 23 January 2020.

[27] The submission was acknowledged to the author and transmitted to the State party for information on 2 March 2020.

highly experienced lawyers proving that there was no corpus delicti in his actions, all attempts to obtain Mr. Ismailov's acquittal have been unsuccessful.

The author emphasizes the importance of the State party's obligation to comply with the Committee's Views, and draws the Committee's attention to the issue of the impartiality of domestic courts by referring to the preliminary observations made by the Special Rapporteur on the independence of judges and lawyers on his official visit to Uzbekistan from 19 to 25 September 2019.[28] Mr. Ismailov's case was brought to the attention of the Special Rapporteur during his visit. The author requests the Committee's assistance in facilitating the implementation by the State party of its Views.

On 19 February 2020, the author informed the Committee that, in January 2020, Mr. Ismailov's case was examined under the supervisory review procedure by the Judicial Panel of the Supreme Court, on the basis of the request to initiate such a review submitted by Mr. Ismailov's counsel and the so-called protest motion submitted by the Chair of the Supreme Court on 19 December 2019.

In the course of the hearings before the Supreme Court on 16 and 23 January 2020, Mr. Ismailov's counsel, inter alia, presented evidence exonerating his client; pointed to numerous procedural violations committed at the pretrial investigation stage and by the court of first instance and the court of cassation; and submitted a number of procedural motions requesting examination of witnesses on Mr. Ismailov's behalf and of witnesses against him, experts and Mr. Ismailov himself. He also requested the Supreme Court to acquit Mr. Ismailov under articles 157 (1) (treason) and 301 (1) (abuse of power) of the Criminal Code for lack of corpus delicti, and to change the qualification of the offence prescribed under article 248 (illegal ammunition storage) of the Criminal Code from part 1 to part 4 thereof. In its oral decision of 31 January 2020, the Judicial Panel of the Supreme Court followed the position taken by the Prosecutor General's Office on 30 January 2020 and acquitted Mr. Ismailov only under article 301 (1) of the Criminal Code. The Supreme Court did not act on any of the procedural motions submitted by Mr. Ismailov's counsel.

Once the Supreme Court orally announced on 31 January 2020 that Mr. Ismailov's initial sentence of 20 years' imprisonment – which was due to end on 8 August 2020 – was reduced by one year, his counsel immediately motioned the Court to release his client from prison, since he would have already served his reduced sentence in full. In the written decision of the Judicial Panel of the Supreme Court dated 23 January 2020, which was made available to Mr. Ismailov's counsel on 5 February 2020, his client's sentence of 20 years' imprisonment was reduced by two months only and was therefore due to end on 23 June 2020. Counsel's oral requests for clarifications as to why the decision announced on 31 January 2020 has been subsequently backdated to 23 January 2020 and amended by the Judicial Panel of the Supreme Court remained unanswered.

The author therefore submits that Mr. Ismailov's case has not been reviewed by an independent court in accordance with the principles of a fair hearing, the presumption of innocence and other procedural safeguards in order to ensure that justice is finally served. Mr. Ismailov continues to serve his sentence of long-term imprisonment for crimes that he did not commit.

Committee's assessment:

(a) Retrial or release: C;

(b) Appropriate reparation, including compensation: E;

(c) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing. The Committee will request a meeting with a representative of the State party during one of its future sessions.

[28] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25043&LangID=E.

7. Uzbekistan

Communication No. 2430/2014, *Allakulov*

Views adopted:	19 July 2017
Violation:	Article 14 (1), read in conjunction with article 2 (3); and article 17, read alone and in conjunction with article 2 (3)
Remedy:	(a) Provide the author with an effective remedy, including adequate compensation, including for lost earnings and damage to his reputation, legal costs involved in litigation and the violation of his rights as stated in the Views; (b) provide him with appropriate measures of satisfaction with a view to restoring his reputation, honour, dignity and professional standing, in line with the City Court decision of 16 January 2009; and (c) take steps to prevent similar violations from occurring in the future.
Subject matter:	Quashing of final decisions clarifying the enforcement of a court decision in the author's favour

Previous follow-up information: None

Submission from the State party: 7 March 2018[29]

The State party recalls the course of events that led the author to file a lawsuit for defamation on 30 June 2008 against a major national newspaper, *Uzbekiston Ovozi* (Uzbekistan's Voice). On 12 November 2008, Mirabadsky District Court in Tashkent granted the author's claim and ordered the newspaper to publish a retraction in its next issue.

On 16 January 2009, following the cassation appeal filed by *Uzbekiston Ovozi*, Tashkent City Court modified the lower court's decision, ordering the newspaper to publish an alternative retraction text, in line with the provisions of the Law on Mass Media. On 16 July 2009, the newspaper informed the court that it had published the retraction and had thus complied with the decision of 16 January 2009.

On 16 July, 25 August and 7 September 2009, the Mirabadsky District Bailiffs' Service requested Tashkent City Court to clarify whether the retraction published by the newspaper could be considered to have enforced the decision of 16 January 2009. On 10 September 2009, the author filed the same request for clarification with Tashkent City Court. By a decision of 11 September 2009, Tashkent City Court responded that the retraction could not be considered to have enforced its decision of 16 January 2009 and clarified that the retraction should be based on the text provided by the author or, in the event that the volume of the text provided by the author and time of its transmission caused damage to the activities of the newspaper, drafted in coordination with him. On 2 October 2009, the Mirabadsky District Bailiffs' Service requested *Uzbekiston Ovozi* to publish the author's retraction text immediately, with reference to the Tashkent City Court decision of 11 September 2009 and to article 34 of the Law on Mass Media (right to retraction and response). However, the newspaper did not comply with that request and instead filed a procedural appeal against the decision of 11 September 2009 before Tashkent City Court, which rejected it on 13 October 2009.

On 30 October 2009, the Tashkent City Prosecutor requested the Presidium of Tashkent City Court to quash the decisions of 11 September and 13 October 2009. On 24 December 2009, the Presidium of Tashkent City Court quashed those decisions and remitted the case for fresh consideration on appeal. On 29 January 2010, Tashkent City Court rejected the requests of the Mirabadsky District Bailiffs' Service and of the author for clarifications on the conformity of the retraction with its decision of 16 January 2009. The author has not challenged the decision of 29 January 2010 by submitting a procedural appeal.

[29] The submission was acknowledged to the State party and transmitted to the author for comments on 30 July 2019.

The State party disagrees with the Committee's conclusion that the situation where the final court decisions were quashed by way of supervisory review proceedings, through the interference of prosecuting authorities, for which no explanation had been provided, cannot be considered as being consistent with the right to a fair hearing by an independent and impartial tribunal. It states that the request of the Tashkent City Prosecutor of 30 October 2009 was made on the basis of article 35 of the Law on the Prosecutor's Office and article 349 of the Civil Procedure Code (in the older version).

The State party also disagrees with the Committee's conclusion that the refusal by Tashkent City Court to issue a clarification on the conformity of the retraction with its previous decision, of 16 January 2009, was detrimental to the execution of this decision, which, to date, remains unimplemented. It explains that the retraction in question was published before the requests for clarification were filed by the Mirabadsky District Bailiffs' Service and by the author. It argues, therefore, that the text of the retraction published by *Uzbekiston Ovozi* on 16 July 2009 was in line with the decision of Tashkent City Court of 16 January 2009, and that the legality and validity thereof have never been challenged by the author.

The State party adds that, on 16 February 2009, the editorial office of *Uzbekiston Ovozi* and its main editor received a fine for failure to voluntarily comply with the decision of Tashkent City Court of 16 January 2009. They paid the fine in full on 14 July 2009.

In view of the above, the State party submits that the enforcement proceedings were adjourned on the basis of article 41 of the Law on the enforcement of court decisions and acts of other bodies, further to the enforcement of the decision of Tashkent City Court of 16 January 2009, that is, the publication of the retraction by *Uzbekiston Ovozi* on 16 July 2009.

Submissions from the author: 25 July 2019[30] and 17 September 2019[31]

The author submits that the State party has still taken no measures to give effect to the Committee's Views, and that his numerous appeals to the domestic authorities, including a number of open letters addressed to the President of Uzbekistan, requesting compliance with the Committee's Views and restoration of his reputation, honour, dignity and professional standing.

In particular, despite being acquitted of fraud by Dekhkanabad District Court on 23 February 2007 and the decision of Bukhara Regional Court of 5 June 2007 affirming the acquittal, he has not been reinstated in his position as rector of Termez State University. As a result of the criminal proceedings and two defamatory articles about him published by *Uzbekiston Ovozi* on 20 May and 28 September 2004, the author has been unable to secure a new job and remains unemployed. Furthermore, *Uzbekiston Ovozi* has not yet published the retraction based on the text provided by the author or drafted in coordination with him.

The author submits that, in addition to his own numerous appeals to the Ministry of Justice, the Ministry of Foreign Affairs, the Supreme Court and the General Prosecutor's Office, the Director of the National Human Rights Centre has contacted high-level domestic authorities on at least eight occasions requesting them to expedite the implementation of the Committee's Views. The majority of these requests have remained unanswered and the General Prosecutor's Office responded, expressing its disagreement with the Committee's conclusions.

The author therefore requests that the Committee call on the State party to fulfil its obligations under the Covenant and the Optional Protocol. He also requests that the Committee take appropriate follow-up measures to ensure the State's party compliance with its Views. In particular, the author seeks the Committee's assistance with the implementation of its recommendation that the State party's authorities restore his reputation, honour, dignity and professional standing by, for example, reinstating him as rector of Termez State University.

[30] The submission was acknowledged to the author and transmitted to the State party for information on 30 July 2019.

[31] The submission was acknowledged to the author and transmitted to the State party for information on 27 February 2020.

Lastly, the author challenges a number of the Committee's conclusions as reflected in its Views adopted in relation to his communication. In particular, the author disagrees with the Committee's assessment that his claims concerning the reinstatement of the time limits for bringing a civil action were not sufficiently substantiated. He also expresses strong disagreement with the Committee's conclusion that his claims under articles 19 and 26 of the Covenant, "in the absence of further pertinent information", were not sufficiently substantiated.

Committee's assessment:

(a) Adequate compensation: C;

(b) Measures of satisfaction, aimed at restoring the author's reputation, honour, dignity and professional standing: C;

(c) Non-repetition: No information.

Committee's decision: Follow-up dialogue ongoing.