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International Covenant on Civil and Political Rights

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Human Rights Committee

Follow-up progress report on individual communications**

A. Introduction

1. At its thirty-ninth session (9–27 July 1990), 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 Rapporteurs for follow-up on Views prepared the present report in accordance with rule 106, paragraph 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 on Views, it has not been possible to ensure systematic, timely and comprehensive follow-up on all cases, particularly given the applicable word limitations of the present report. The present report is based on the information available on the cases presented below, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. At the end of the 132nd session, in July 2021, the Committee concluded that there had been a violation of the Covenant in 1,278 (83.4 per cent) of the 1,532 Views that it had adopted since 1979.

3. At its 109th session (14 October–1 November 2013), 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 on State party reports.

4. 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:[1]

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.

* Reissued for technical reasons on 22 December 2021.

** Adopted by the Committee at its 133rd session (11 October–5 November 2021).

[1] The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

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.**

5. 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.

6. At its 127th session (14 October–8 November 2019), the Committee decided to adjust the methodology for preparing the reports on follow-up to Views and the status of cases by establishing a list of priorities based on objective criteria. Specifically, the Committee decided in principle to: (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; and (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 is not expected to ensure any proactive follow-up on these cases that have been suspended for lack of information, unless one of the parties submits an update. Priority and focus will be given to recent cases and cases on which one or both parties are regularly providing the Committee with information.

B. Follow-up information received and processed up until July 2021

1. Finland

Communication No. 2950/2017, *Käkkäläjärvi* et al.

Views adopted:	2 November 2018
Violation:	Article 25, read alone and in conjunction with article 27
Remedy:	The State party is under an obligation to provide the authors 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 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 the Covenant. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring 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[2]

The State party submits that the Finnish and North Sami translations of the Committee's Views have been disseminated to all relevant stakeholders and were discussed by authorities in a meeting on 14 June 2019.

The State party refers to meetings with representatives of Sami Arvvut, including Klemetti Näkkäläjärvi, concerning the Views, and a meeting with the author of communication No. 2668/2015 and representatives of the Sami Parliament and of the Inarinmaa Lapland Village Association.

The State party observes that, on 21 February 2019, four members of the Sami Parliament plenum published a statement, expressing their dissent to the Views of the Human Rights Committee of 1 February 2019 and stating that the Views of the Committee were based on biased and deficient information. In their statement, the members stated that the Sami Parliament had not dealt with the matter, and they emphasized that the Supreme Administrative Court had found the measures taken by the Election Committee and Board to be illegal.

The State party notes that, on 3 April 2019, on the basis of the Committee's Views, the Executive Board of the Sami Parliament requested that the Supreme Administrative Court annul its decisions of 26 November 2011 and 30 September 2015, concerning 97 individuals currently on the electoral roll. On 5 July 2019, the Court rejected the petition for annulment, as changes in case law or the interpretation of law, namely to include the Committee's Views, could not be considered to constitute new evidence under section 63 (1) (3) of the Administrative Judicial Procedure Act. The Court held that the definition of "manifestly erroneous" was that the application of the law was clearly and indisputably in conflict with prevailing legal precedent. By contrast, if the prevailing law in question was open to interpretation, annulment would not be justified. The Court published a summary of applicable precedent to show that it had duly considered objective criteria in its consideration of the definition of a Sami. Although it did not challenge the Committee's interpretation of indigenous rights, it did question whether a later decision by an international monitoring body could be grounds for extraordinary judicial review in a separate case. It also referred to an unclear international position as to group identification, prior to the present Views, referring specifically to the 2009 concluding observations of the Committee on the Elimination of Racial Discrimination, in which the Committee stated that Finland should give more weight to self-identification. It therefore could not conclude that its interpretation and application of precedent at the time was manifestly erroneous.

The State party observes that, on 1 July 2019, the Electoral Committee of the Sami Parliament removed 97 individuals from the electoral roll. In that connection, the State party emphasizes that it has been approached by some of those persons, expressing consternation that they had not been heard by the Committee.

Regarding the review of section 3 of the Sami Parliament Act, in line with articles 25 and 27 of the Covenant, the State party notes that the government of Prime Minister Antti Rinne, inaugurated on 6 June 2019, had concluded that there was insufficient time prior to the scheduled Sami Parliament elections in September 2019 to allow a substantive review and amendment.

The State party maintains that it will respect and promote the realization of the linguistic and cultural rights of all Sami People and Sami groups in a way that takes relevant international treaties into account and, as part of that work, will examine the possibility of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization. Furthermore, the work on reforming the Sami Parliament Act and establishing

[2] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 4 September 2019.

a Truth and Reconciliation Commission will continue. It will also continue its dialogue with the Sami Parliament on reform of the Act and other projects related to the Sami people.

Submission from the authors: 31 December 2019[3]

The authors express their disappointment at the State party's failure to implement the Committee's Views. They note that they have relied on the information received from the Supreme Administrative Court and the Sami Parliament but note that the Court has not yet decided on all relevant appeals, emphasizing the need for the Committee to continue following developments.

Regarding the meeting organized with representatives of the Inari Sami and Inarinmaan Lapinkylä Association, the authors note that they have no bearing on the implementation of the Views in the present communication, as the Sami Parliament represents all Sami linguistic groups in Finland, including Inari Sami. Furthermore, the Inarinmaan Laplinkylä Association does not recognize the Sami as an indigenous people and regards ethnic Finns historically registered as Lapp-tax paying citizens to be indigenous people. The Association does not represent Sami and is not a stakeholder in this matter.

The authors further submit that the State party actively collaborates with anti-Sami groups, even since the Committee's Views were communicated. Many anti-Sami groups were involved in the 2014–2015 parliamentary hearings on the proposal to amend the Sami Parliament Act. The authors argue that the State party's stance is merely a continuation of its policy of allowing Sami rights to be determined by the Finnish majority.

The authors share concerns about the State's publication of individual approaches by members of the Sami Parliament, noting that the Sami Parliament is not a party to the present communication. In addition, the 97 individuals who were removed from the electoral poll had been heard extensively before the Supreme Administrative Court and their position was represented by the State party before the Committee.

The authors summarize the State party's position as follows: (1) it does not recognize the legal authority of the Sami Parliament to represent all of the Sami linguistic groups; (2) it aims to demonstrate a consequent divide in the Sami community; and (3) it fails to acknowledge the support and respect expressed by wider Sami society in relation to the Committee's Views, choosing only to represent facts that support its own position.

The authors do not consider the decision of the Supreme Administrative Court to be relevant to the Committee's follow-up procedure, since it was discussed in detail within the original submissions.

However, the State party seeks to shift the responsibility for the implementation of the Committee's Views to the Supreme Administrative Court, without fulfilling its own obligation to change legislation in alignment with the Committee's objective criteria.

The authors clarify that they have not taken part in the annulment petition, beyond informing the Ministry of Justice, the Ministry of Foreign Affairs and the Sami parliament that the petition for annulment is problematic in that it would only serve to further delay the implementation process, which has indeed been borne out. The Act of the Sami Parliament remains unamended, despite ample time to pass legislation. The State party has preferred to allow the annulment petition to hamper implementation of the Committee's Views in order to allow the decisions of the Supreme Administrative Court to build support for the State's own position.

Regarding the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the authors recall that the State party has voiced the same intention before various human rights bodies since 1996. The authors maintain that this is a separate matter, unrelated to the implementation of the Committee's Views in the present communication.

The authors note that they have received no information regarding, or notice of, any plans by the State party to carry out work on the reform of the Act of the Sami Parliament. The authors

[3] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 5 March 2021.

state that information provided by the State party to the Committee in this respect is not accurate.

The authors also emphasize that the Truth and Reconciliation Commission[4] is a completely separate entity, which is not mandated to improve the legal status of the Sami or work on reform of the Sami Parliament Act. In fact, the Commission will focus on individual experiences in the context of historical events. It is therefore unrelated to the implementation of the Committee's Views in the present communication.

The authors also claim that the State party only reported on administrative measures taken and the current situation, which shows a lack of any actual objectives, plans or willingness to implement the Committee's Views, and that it has not taken any actual measures to implement the Committee's Views.[5] The authors contend that the State party is delaying action until the newly elected Sami Parliament begins its term. The authors do not recognize the Sami Parliament in its current form as being representative of the Sami people because of its high proportion of non-Sami members elected as a result of the Supreme Administrative Court's wide interpretation of electoral roll registration criteria to include non-Sami ethnic groups. The authors view this as part of an effort by the State party to control Sami ethnicity and the Sami Parliament.

In conclusion, the authors argue that the State party has failed to report on developments in relation to obligations stated in the Committee's Views, which are (1) to review section 3 of the Sami Parliament Act in order to ensure 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 according to articles 25 and 27 of the Covenant; (2) to take all steps necessary to prevent similar violations from occurring in the future; and (3) to provide an effective and enforceable remedy when it has been determined that a violation of those rights has occurred. The authors assert that the State party has not reviewed the definition of a Sami and, rather than preventing future violations, the State party has allowed Sami elections to take place without any reform of legislation, in effect allowing more ethnic Finns to be registered on the Sami electoral roll. Furthermore, the State party has failed to provide any remedies to the authors, including by refusing to provide funding to assist the authors in following up on the case, beyond the provision of travel costs for five persons to attend a meeting at the Ministry of Justice, after which it was determined that no further meetings were necessary. No other financial resources have been made available. The authors state that the Ministry of Justice has indirectly indicated that authorities were unwilling to discuss compensatory remedies further.

The authors explain that they had previously presented detailed proposals to the State party on how best to implement the Committee's Views. None of these proposals were considered and, shortly after the meeting, the authors were simply informed that the Sami elections were not postponed. No further communication has been received from the State party.

The authors conclude that the State party has failed to implement the Committee's Views and has shown itself to be reluctant to discuss those obligations. As a result, the authors assert that the State party does not acknowledge the authority of the Committee's Views and therefore has indicated its lack of commitment to comply with its obligations under the Covenant.

Finally, the authors state that in order to protect the Sami from assimilation, it is vital to create Sami cultural structures to support: Sami cultural administrative structures (*siida*) and systems that support Sami communality; traditions and the Sami way of life; traditional Sami livelihoods; and Sami education. This activity needs to be planned by Sami people for Sami

[4] The State party, Sami Parliament and Skolt Sami Village Assembly have an understanding on establishing the Truth and Reconciliation Commission. The Commission is a Nordic initiative and a procedure that has been negotiated by the States parties and the Sami Parliamentary Council, which represents the Sami Parliaments. The authors of the communication have not been involved in that process.

[5] The State party has only implemented the administrative obligations, such as publishing and disseminating translations of the Committee's Views, and provided a written response to the Committee within the established deadline.

people. The authors request that the Committee consider the best alternative remedies, clearly emphasizing that the Sami do not want money for individuals but resources for the whole community to rebuild Sami society with a view to creating a sustainable future for the Sami as an indigenous people.

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. The Committee will request a meeting with a representative of the State party during one of the future sessions of the Committee.

2. Kyrgyzstan

Communication No. 2313/2013, *Osincev*

Views adopted:	15 March 2019
Violation:	Articles 9 (1), (2) and (4) and 14 (3) (d)
Remedy:	The State party is under an obligation to provide the individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, provide Evgeny Osincev with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Denial of fair trial; arbitrary detention
Previous follow-up information:	None
Submissions from the author:	29 August 2019 and 19 September 2019[6]

In his submissions dated 29 August 2019 and 19 September 2019, the author informs the Committee that, by its decision of 27 June 2019,[7] the Supreme Court of Kyrgyzstan found the Committee's Views in his case to be unsubstantiated. In particular, the Supreme Court concluded that the facts as acknowledged by the Committee failed to be corroborated by the criminal case file materials. According to the Court, neither the investigative authorities nor the courts committed any violation of the norms of criminal procedure law.

The author submits that the decision of the Supreme Court has deprived him of the right to have his case reviewed and to receive any compensation as required in the Views. Under the circumstances, the author inquires whether he may be entitled to request that adequate compensation be awarded by the Committee itself, by analogy with the practice of the European Court of Human Rights.

Submission from the State party: 2 November 2020[8]

In its submission dated 2 November 2020, the State party largely recalls the information contained in the Committee's Views, that is, the timeline of the criminal proceedings in the author's case.

The State party further informs the Committee that, on 27 June 2019, the judicial panel of the Supreme Court dismissed the author's request to review his criminal case in the light of new circumstances. The State party explains that, in accordance with paragraph 31 of the

[6] Both submissions were acknowledged to the author and transmitted to the State party for observations on 6 November 2019.

[7] Annexed to the author's submissions.

[8] The submission was acknowledged to the State party and transmitted to the author for comments on 4 November 2020.

regulation concerning the procedure of the interaction among the public bodies on consideration of communications and decisions of the human rights treaty bodies, adopted by the Government on 8 November 2017, the amount of compensation for the damage sustained should be established by a national court. The State party also submits that, under article 99 of the Criminal Code, compensation for material damages and for moral harm is to be awarded by a national court, regardless of whether a person has been exempted, as appropriate, from criminal liability or from criminal punishment. Furthermore, in accordance with article 16 of the Civil Code, if a person has suffered moral harm resulting from actions that violate the person's personal non-property rights or encroach on the intangible goods or personal non-property rights belonging to the person, as well as in other cases provided for by law, the court may oblige the offender to provide monetary compensation to the victim.

In this regard, the State party submits that the author has filed a suit with the judicial authorities, requesting to recover moral damages in the amount of 1 million Kyrgyz soms from the Ministry of Finance. The State party explains that, as of the date of the submission, the author's suit was under consideration at the Pervomaisky District Court of the city of Bishkek.

Submission from the author: 24 May 2021[9]

The author confirms that he had filed a claim for damages against the State party's authorities based on the Committee's findings of a violation of his rights under the Covenant. He further informs the Committee that on five occasions, the Pervomaisky District Court of Bishkek refused to examine his claims on procedural grounds, namely for a failure to pay the court fees and to attach any decision of a domestic court acknowledging that the damage sustained by him was the fault of the State authorities. However, on the sixth occasion, by a decision of 22 April 2021,[10] the Court found the author's claim for damages admissible. It further referred to article 2 (3) of the Covenant and concluded that the State party was bound by the Committee's Views. Relying on the Committee's findings of a violation of the author's rights under article 9 (1), (2) and (4) of the Covenant, the court granted the claim in part and awarded the author 10,000 Kyrgyz soms in moral damages.

The author asserts, in this regard, that the amount of compensation awarded to him is lower than the minimum level of income necessary to maintain subsistence in the State party. He further submits that on 21 May 2021, the Ministry of Finance of the State party filed an appeal against the decision of the Pervomaisky District Court of Bishkek.[11] In its appeal, the Ministry argued, in particular, that the Committee's Views were of a recommendatory nature and that the Court, therefore, should have proceeded with an independent examination of the circumstances in which the moral damage, if any, had been allegedly sustained.

In the light of the foregoing, the author submits that the State party refuses to give effect to the Committee's Views concerning the present communication.

Committee's assessment:

(a) Providing adequate compensation: C

(b) Non-repetition: No information

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

3. Mexico

Communication No. 2766/2016, *Valdez Cantú and Rivas Rodriguez*

Views adopted:	24 October 2019
Violation:	Articles 6 (1), 7, 9 and 16, and also article 2 (3) read in conjunction with articles 6, 7, 9 and 16,

[9] The submission was acknowledged to the author and transmitted to the State party for information on 25 May 2021.

[10] Annexed to the author's submission.

[11] Annexed to the author's submission.

	in respect of Victor Manuel Guajardo Rivas; and article 7, and article 2 (3) read in conjunction with article 7, in respect of the authors of the communication
Remedy:	The State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. In this regard, the State party should: (a) carry out a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances of Mr. Guajardo Rivas' disappearance; (b) immediately release Mr. Guajardo Rivas, if he is still being held incommunicado; (c) if Mr. Guajardo Rivas has died, hand over his remains to his family under decent conditions; (d) investigate and, where appropriate, punish any type of action that might have hindered the effectiveness of the processes of searching for and locating Mr. Guajardo Rivas; (e) provide the authors with detailed information on the outcome of the investigation; (f) prosecute and punish those found responsible for the violations committed and make the results of such measures public; and (g) grant the authors, as well as Mr. Guajardo Rivas, if he is still alive, full reparation, including adequate compensation for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future, including by establishing a register of all detained persons.
Subject matter:	Enforced disappearance
Previous follow-up information:	None
Submission from the State party:	27 July 2020[12]

In its submission, the State party informs the Committee that it had an inter-institutional virtual meeting on 17 July 2020 with the representatives of the victims (*i(dh)eas Litigio Estratégico en Derechos Humanos*) and Mr. Guajardo Rivas' mother, as well as representatives of the following departments: the Coahuila State Attorney General's Office, the General Secretary of the government of Oaxaca, the National Search Commission, the Coahuila State Search Commission, the Attorney General of the Republic's Office, the Executive Commission for Victim Support, the Ministry of Foreign Affairs and the Secretary of Governance. In the meeting, the Executive Commission for Victim Support committed itself to organizing a meeting at some point during the period 23 to 29 July 2020 in order to provide answers to the requests for integral reparation.

The State party also reports that a meeting to be attended by representatives of the Coahuila State Attorney General's Office, the National Search Commission, the Coahuila State Search Commission, the Attorney General of the Republic's Office, the Secretary of Governance and the Ministry of Foreign Affairs was planned for 31 July 2020. Participants would exchange and collect information on the case, and would review the investigation and its possible link to organized crime.

[12] The submission was acknowledged to the State party and transmitted to the authors for comments on 6 November 2020.

Another meeting between the Secretary of Governance, the government of Coahuila and the victim's representatives, aimed at reviewing matters related to satisfaction measures, was planned for 3 August 2020.

The State party reiterates that a criminal investigation was initiated on 11 January 2017 against J.J.M.S., H.A.O.E. and M.A.M.G. for their alleged responsibility in the crime of enforced disappearance. Arrest warrants were issued against them, and M.A.M.G. was tried and imprisoned. He was later released, following his appeal. The arrest warrants against J.J.M.S. and H.A.O.E. were still pending. The Attorney General of the Republic's Office continues its investigation, by comparing genetic profiles, conducting forensic genetic studies and speaking with various witnesses.

With regard to reparation measures, the State party indicates that the Executive Commission for Victim Support has been providing food and a rental subsidy to the family of the victim since 2017. In 2018, the victim's mother and partner both received psychological support. The Executive Commission for Victim Support planned to carry out a specialized assessment of the victim's family to evaluate their medical and psychological needs. After the assessment, the victim's family would be referred to the adequate services, and their care services scheduled, in consultation with them.

Submission from the authors: 4 March 2021[13]

The authors inform the Committee that in December 2019 and May 2020, they asked the State party to hold a meeting to discuss the implementation of the Committee's Views. The authors regret that this initial meeting did not take place until July 2020. The authors submit that the Executive Commission for Victim Support refused to commit explicitly to the implementation of the Committee's Views. This absence of express commitment has affected the process of reparation.

The authors submit that, following an agreement made with the State party during the meeting held on 31 July 2020, they received copies of the investigation plan and its matrix on 12 September 2020. The authors regret that it took more than a month to receive it, and that it affected the promptness of the investigation, which was a requirement stipulated by the Committee. The authors also regret that, following that same meeting, the Attorney General of the State of Coahuila did not send the evidence, which was relevant to the identification of the perpetrators of the enforced disappearance, to the Attorney General of the Republic or to the authors' representatives. Likewise, there was no individualized search plan for Mr. Guajardo Rivas, and his family and representatives were still not aware of the results of the searches that the State party conducted and promised to deliver on 7 August and 3 September 2020.

The authors note that the State party considers the food and rental subsidy given to the victim's family through the National and Federal Registries of Victims and the measures of psychological care granted to victim's partner to be measures of reparation, whereas those measures are merely measures of assistance and care that must be provided by the State party in accordance with the General Law on Victims. The assistance and care measures were granted in 2017 and 2018, before the Committee's Views were adopted, and therefore, are unrelated to the implementation of those Views. As at the date of the submission, the Executive Commission for Victim Support and the Ministry of the Interior had not presented a proposal for a comprehensive reparation plan and had not contacted Mr. Guajardo Rivas' mother.

The authors also submit that the State party has not adopted any specific measures to prevent similar violations in the future. The State party has neither published nor disseminated the Committee's Views.

The authors also submit that neither the Attorney General of the State of Coahuila, nor the Attorney General of the Republic conducted a prompt, effective, exhaustive and transparent investigation into the circumstances of Mr. Guajardo Rivas' enforced disappearance. The perpetrators of his enforced disappearance that were identified were not brought to trial or

[13] The submission was acknowledged to the authors and transmitted to the State party for information on 18 May 2021.

penalized. His whereabouts have not been determined, and it is still unknown if he is alive or deceased. In addition, comprehensive reparation has not been provided to the authors of the communication.

Therefore, the authors request that the Committee consider the State party's response to be unsatisfactory.

Committee's assessment:

(a) Investigation into the circumstances of Mr. Guajardo Rivas' disappearance: B

(b) Release of the victim: C

(c) Return of the remains of the victim: C

(d) Investigation and sanctioning of any type of action that might have hindered the effectiveness of the searching and tracing process: C

(e) Providing the authors with detailed information about the investigation: B

(f) Prosecution and punishment of those responsible: C

(g) Full reparation: C

(h) 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 the future sessions of the Committee.

4. Netherlands

Communication No. 1564/2007, *X.H.L.*

Views adopted:	22 July 2011
Violation:	Article 24, read in conjunction with article 7
Remedy:	The State party is under an obligation to provide the author with an effective remedy by reconsidering his asylum claim in light of the evolution of the circumstances of the case, including the possibility of granting him a residence permit. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.
Subject matter:	Unaccompanied minor claiming asylum
Previous follow-up information:	A/68/40 (Vol. I)
Submission from the State party:	21 February 2020[14]

On 21 February 2020, the State party submitted additional follow-up observations. The State party refers to the earlier exchange of correspondence between the State party and the Committee, and in particular, information it submitted in the letters of 1 March 2012 and 28 January 2013, in response to counsel's comments of 6 September 2012, in relation to the failure of the author to report to the Immigration and Naturalization Service, and the report of September 2011 from the Alien's Police department informing the State party that, on enquiring at the author's last known address, they were informed that the author had left the address three years earlier and was thought to be living abroad. According to the correspondence in the State party's file, no further information has been received since the Committee acknowledged receipt, on 12 February 2013, of the State party's letter of 28 January 2013, indicating that the information would be forwarded to counsel for comments. The State party explains that it therefore understood that no further action was required on

[14] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 19 May 2020.

its part and, in that regard, invites the Committee to close the follow-up on this communication.

Submission from the author's counsel: 5 June 2020[15]

On 5 June 2020, the author's counsel submitted comments on the State party's additional observations. He states that the author had stayed with friends and then changed his address several times since the summer of 2009. He also explains that he himself had also changed physical address, though had retained his previous email address and phone number. All of this had increased the difficulty of continued contact with the author. Counsel states that his last direct contact with the author was in 2012 but that he did have indirect contact through friends of the author in the period 2013–2014. He has had no news from the author since 2015. Counsel recalls that the State party's continued refusal to accept the Committee's findings made it difficult to achieve a better outcome in relation to the follow-up to the Views. Counsel refers, in particular, to the State party's letter of 24 February 2012, clearly setting out that it refuted the finding of a violation by the Committee and that, in any case, the author was no longer a child and that therefore there was no ongoing violation. Counsel further states that, to his knowledge, the State party did not respond to the request of 2 April 2012 by the Dutch Ombudsman for Child Rights to reconsider the decision. Counsel asserts that the State party's refusal to review the decision in the author's case, and its failure to provide additional comments on 28 January 2013, caused the author to lose faith and to seek permanent accommodation elsewhere. Counsel explains that he does not have adequate resources to make comprehensive enquiries as to the author's whereabouts and is not inclined to do so when there is no good news to give him. Of course, if action were to be taken, in accordance with the Views, then he would be able to justify doing so. Counsel therefore calls upon the Committee to urge the State party to provide the author, as a migrant or national of the Netherlands, with full legal rights. Counsel further notes that the State party has the means by which to reach the author, should it wish to comply with the Committee's Views.

Submission from the State party: 29 July 2020[16]

On 29 July 2020, the State party responded to counsel's comments by reiterating the position set out in its submission of 21 February 2020. As a reply to counsel's comment on the State party's failure to respond to the Children's Ombudsman, the State party provided the letter of 31 May 2012, sent by the Minister of Foreign Affairs to the Children's Ombudsman. In that letter, the Minister noted that the Committee's Views were not legally binding and clearly stated that the State party was not prepared to follow the recommendations contained in the Committee's Views, owing to its established position, as published in the Government Gazette of 4 May 2012, that the decision lacked precedential consistency and sufficient reasoning was not provided for diverging from the precedent. The State party reiterates its earlier request to close the follow-up on this communication.

Submission from the author's counsel: 7 December 2020[17]

In his additional comments provided in response to the State party's submission of 29 July 2020, counsel states that he had not previously seen the letter of 31 May 2012, sent by the Minister of Foreign Affairs to the Children's Ombudsman, and states that this letter clearly demonstrates the lack of respect the State party has for the Committee's Views. He further asserts that people like the author fear that despite the Committee's findings, the State party will never accept or take any positive action to implement the Views and that, therefore, they feel that they have no choice but to go into hiding. Counsel reiterates the importance of the Committee's findings and requests that the Committee continue to follow up on this case.

Committee's assessment:

[15] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 July 2020.

[16] The submission was acknowledged to the State party and transmitted to the author's counsel for information on 6 December 2020.

[17] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 July 2021.

(a) Reconsideration of the author's asylum claim, including the possibility of granting him a residence permit: E

(b) Non-repetition: No information

Committee's decision: Close the case, with a note of unsatisfactory implementation of the Committee's Views.

5. Russian Federation

Communication No. 2410/2014, *Orkin*

Views adopted:	24 July 2019
Violation:	Article 7, read in conjunction with articles 2 (3), 9 (1) and (2), and 14 (3) (b) and (d)
Remedy:	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 take appropriate steps to provide compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Cruel and inhuman treatment; arbitrary detention
Previous follow-up information:	None
Submission from the State party:	5 October 2020[18]

The State party informs the Committee that the author lodged an application with the Supreme Court of the Russian Federation, requesting the reopening of the proceedings in his case in the light of the new circumstances, namely the Committee's finding of a violation of his rights under article 7, read in conjunction with articles 2 (3), 9 (1) and (2), and 14 (3) (b) and (d) of the Covenant. His application was subsequently dismissed.

In this regard, the State party notes that article 413 of the Code of Criminal Procedure provides for the following grounds of reopening of the proceedings in the light of the new circumstances: (i) a decision of the Constitutional Court of the Russian Federation whereby the law applied in a respective criminal case is declared unconstitutional; (ii) a finding by the European Court of Human Rights of a violation by the State party of its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); (iii) new socially dangerous consequences of an illegal act in question that occurred during the criminal trial or after the conviction had been handed down and that provide a basis for bringing new charges of an aggravated criminal offence; and (iv) other new circumstances.

The State party further notes that no decision has been issued in the author's case by the Constitutional Court or the European Court of Human Rights, as required by the above-mentioned provision. With regard to the reopening of the proceedings following the adoption of the Committee's Views, the State party asserts, referring to ruling No. 1248-O of the Constitutional Court, delivered on 28 June 2012, that reopening of the proceedings in the light of the new circumstances pursuant to section 49 of the Code of Criminal Procedure with a view to having a criminal conviction reviewed on the basis of a finding by the Committee of one or more violations of the Covenant is possible only where it is necessary to ensure the lawfulness of a criminal conviction that has taken effect and if the violation found by the Committee cannot be otherwise remedied.

[18] The submission was acknowledged to the State party and transmitted to the author for comments on 15 February 2021.

The State party also submits that the Committee's Views have been made publicly available on the website of the Supreme Court of the Russian Federation. It notes that the judges and the registry of that Court had been informed of the Committee's Views and the summary had been published in a review of the jurisprudence of the inter-State human rights bodies, issued in 2020, and disseminated to the general courts in the State party.

Submissions from the author: 9 March 2021[19] and 6 September 2021[20]

In his submission of 9 March 2021, the author welcomes the publication of the Committee's Views on the website of the Supreme Court.

He also confirms that on 19 August 2020, he lodged an application with the Supreme Court of the Russian Federation requesting the reopening of the proceedings in his case in the light of the new circumstances, namely the Committee's Views with a finding of a violation of his rights under the Covenant. On 15 September 2020, the Supreme Court returned his application without examination. The Supreme Court noted, with reference to the ruling of the Constitutional Court No. 1248-O, that the reopening of the proceedings with a view to having a criminal conviction reviewed on the basis of the finding of a violation of the Covenant by the Committee can be resorted to only where it is necessary to ensure the lawfulness of a criminal conviction that has taken effect and if the violation found by the Committee cannot be otherwise remedied. The Supreme Court also noted that a decision on the reopening of the proceedings in the light of the new circumstances should be taken by a prosecutor.

The author further submits that he had subsequently lodged repeated applications with the Office of the Prosecutor General of the Russian Federation, advancing the same arguments and requesting the reopening of the proceedings in his case in the light of the new circumstances. On 11 November 2020, an official of the Office of the Prosecutor General informed the author that his application had been referred to the Prosecutor's Office of Krasnoyarsk Region.

On 24 December 2020, a deputy prosecutor of Krasnoyarsk Region dismissed the author's application. The prosecutor referred to the finding by the Committee of a violation of the author's rights under article 7, read in conjunction with article 2 (3), of the Covenant, and the shortcomings in the investigation into the author's allegations of ill-treatment established by the Committee in paragraphs 13.3 and 13.4 of its Views, concerning the present communication. The prosecutor further recalled the steps taken by the domestic authorities to investigate the author's allegations and the procedural decisions taken following this investigation. He noted that the decision not to bring criminal charges against the police officers involved in the author's arrest had been found lawful. He further noted that, within the meaning of article 413 (2) of the Code of Criminal Procedure, the circumstances that provide a basis for the reopening of the case were facts that had not been known to the court at the time when the respective decision was rendered and took effect. The prosecutor also reiterated the position of the Constitutional Court laid down in its ruling No. 1248-O with regard to the reopening of the proceedings based on the finding of a violation of the Covenant by the Committee. He further noted that, in its Views concerning the present communication, the Committee had not expressly invited the State party to conduct the author's retrial. The prosecutor concluded that there were no grounds to reopen the proceedings in the author's case.

The author further submits that, on 25 January 2021, he lodged a request with the President of the Supreme Court for a supervisory review of the Prosecutor's decision of 24 December 2020. On 9 February 2021, his request was dismissed, as the matter raised by the author fell outside the competence of the Supreme Court.

In his submission of 6 September 2021, the author states that, on 10 March 2021, he lodged a complaint with the Office of the Prosecutor General of the Russian Federation against the decision of 24 December 2020, rendered by the deputy prosecutor of Krasnoyarsk Region,

[19] The submission was acknowledged to the author and transmitted to the State party for information on 27 April 2021.

[20] The submission was acknowledged to the author and transmitted to the State party for information on 7 October 2021.

who dismissed the author's application. On 16 April 2021, the senior prosecutor of the Cassation and Supervisory Department of the Office of the Prosecutor General informed the author that his complaint had been transmitted to the Prosecutor's Office of Krasnoyarsk Region.

On 17 May 2021, the author received a letter from the Prosecutor's Office of Krasnoyarsk Region, stating that within the meaning of article 413 of the Code of Criminal Procedure, the Committee's Views did not constitute the so-called new circumstances for the reopening of the proceedings. Furthermore, according to the ruling of the Constitutional Court No. 1248-O, a recommendation made in the Committee's Views to have a criminal conviction reviewed would be sufficient to reopen the case. The Committee, however, did not make such a recommendation in this particular case.

The author states that, on 15 June 2021, he lodged an application with the Prosecutor General of the Russian Federation, requesting the reopening of the proceedings in his case in the light of the new circumstances, namely the Committee's Views with a finding of a violation of his rights under the Covenant. On the same date, the author also submitted two other applications: a complaint to the Prosecutor General of the Russian Federation, opposing the decision rendered by the prosecutor of the Prosecutor's Office of Krasnoyarsk Region and pointing to the dereliction of his duty, owing to the failure to reopen the proceedings; and an application to the Prosecutor General of the Russian Federation, requesting the reopening of the proceedings in his case in the light of the new circumstances and providing the materials demonstrating that the author was subjected to torture and arbitrarily detained, and that the criminal case against him was trumped up.

The author submits that, on 23 June 2021, he lodged an application with the President of the Supreme Court, requesting him to issue a ruling based on the Committee's Views of 24 July 2019, on the compensation that should be provided to the author for the violations suffered. On 8 July 2021, an official of the Supreme Court informed the author that the said Court did not have competence to give consultations and to provide clarifications to citizens. The author argues that, by neglecting his request for the determination of compensation set out in the Committee's Views, the official of the Supreme Court infringed on the author's rights and departed from the principle of legal certainty.

In his submission, the author also claims that in the letter from the Supreme Court of the Russian Federation of 15 September 2020, the judge did not provide the full information contained in the ruling of the Constitutional Court No. 1248-O. In particular, it was not noted that the other new circumstances for reopening the proceedings[21] could include submissions from citizens, as stipulated in article 415 (1) and (2) of the Code of Criminal Procedure. As a result, the withholding of these facts led to the incomplete information being provided by the State party in its follow-up observations of 5 October 2020.

In the light of the foregoing, the author respectfully requests the Committee to exhort the State party to implement the Committee's Views concerning the present communication.

Committee's assessment:

(a) Providing compensation for the violations suffered: C

(b) Non-repetition: No information

Committee's decision: Follow-up dialogue ongoing.

6. Uzbekistan

Communication No. 2044/2011, *T.V. and A.G. (deceased)*[22]

Views adopted: 11 March 2016

[21] Reference is made to article 413 (iv) of the Code of Criminal Procedure.

[22] On 29 February 2020, the first author informed the Secretariat that the second author had passed away on 5 January 2014.

Violation:	Articles 9 (1) and (4) and 7, read alone and in conjunction with article 2 (3)
Remedy:	The State party is under an obligation to provide the authors 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 take appropriate steps to: (a) conduct an impartial, effective and thorough investigation concerning the authors' apprehension on 10 October 2006 and their unlawful hospitalization until 19 October 2006 in the city's psychiatric hospital, and prosecute and punish appropriately those responsible; and (b) provide the authors with adequate compensation and reimbursement of any legal costs incurred by the authors. The State party is also under the obligation to take steps to prevent similar violations in the future.
Subject matter:	Unlawful and arbitrary hospitalization and detention; right to a judicial review.
Previous follow-up information:	None
Submissions from the State party:	2 October 2016[23] and 16 June 2017[24]

The State party recalls the factual circumstances that led to the adoption of the Committee's Views in the present communication. Namely, on 17 September 2006, employees of the Samarkand city administration installed a common water consumption measuring device in the basement of residential building No. 9 in the Sat-Tepo quarter of the city of Samarkand, where the authors (Ms. T.V. and Mr. A.G.) lived. However, according to the State party, Ms. T.V. began to agitate other residents of the residential building to come up with a proposal to uninstall the consumption measuring device and, in case of refusal by the authorities to do so, to "sabotage" the payments for the use of drinking water. According to the State party, the records of the meetings of owners of apartments in the residential building No. 9 demonstrate that the authors systematically refused to pay for the use of drinking water, used obscene or insulting language vis-à-vis representatives of the relevant State party's authorities, and incited a confrontation between residents and representatives of the authorities.

In view of the above, a group of residents wrote a joint complaint against the authors' inappropriate behaviour, asking to transfer them to a psychiatric clinic for the examination of their mental health. Pursuant to this joint complaint, the authors were taken to the city's psychiatric clinic by ambulance. The State party submits that, under the existing regulations, it is legal to hospitalize those individuals who, in view of their mental state, pose an immediate danger to themselves or to others, without their consent or the consent of their relatives or legal representatives. The State party explains that both authors had previously been diagnosed with certain mental disorders and, in view of that fact, on 14 October 2006, the administration of the psychiatric clinic had ordered the authors' medical examination by the clinic's expert council. The expert council confirmed the authors' earlier diagnoses and, on 19 October 2006, the authors were discharged.

The State party further submits that the authors' petitions to the law enforcement bodies and the regional administration, requesting an investigation of the actions of police officer Mr. N., the Chair of the owners' assembly Mr. Sh. and the ambulance doctor Mr. Kh.,[25] were

[23] The submission was acknowledged to the State party and transmitted to the authors for comments on 28 February 2020.

[24] The submission was acknowledged to the State party and transmitted to the authors for comments on 28 February 2020.

[25] The names of all three individuals are available on file.

properly addressed by the Internal Affairs Directorate of Samarkand Region and the Prosecutor's Office of the city of Samarkand.

The State party points out that the authors attempted to file a civil lawsuit against the acts of the three above-mentioned individuals, inter alia, requesting to invalidate the diagnoses made by Mr. Kh. On 27 December 2006, the court refused to accept the suit, stating that it was not supported by the required documents. On 3 April 2007, the authors made a second attempt to file a civil lawsuit, which was also unsuccessful. On 17 May 2007, the Samarkand City Court rejected the authors' claims. The authors further appealed against the decision of the Samarkand City Court to the Appeal Board of the same court, which on 26 June 2007 partially upheld the decision of the first instance court. However, the Appeal Board of the Samarkand City Court decided to discontinue the proceedings related to the authors' request to invalidate their diagnoses. The State party explains that the said proceedings were discontinued, because the issue of the validity of a medical diagnosis was outside a civil court's competence, and had to be addressed by medical experts. The authors also attempted to appeal against the decision of the Appeal Board of the Samarkand City Court to the Presidium of the Samarkand Regional Civil Court, as well as to the Supreme Court in the framework of the supervisory review proceedings, but to no avail.

The State party submits that, in general, during the court proceedings it was established that on 8 October 2006 at the meeting of all owners of apartments the authors insulted, threatened and physically attacked Mr. Sh. Moreover, during the next two days – that is, until 10 October 2006 – the authors actively prevented Mr. Sh. from carrying out his duties and disturbed other residents. The Supreme Court established that there was no evidence in support of the authors' claims that they had been denied justice by the lower courts. Therefore, it did not find any grounds to initiate a supervisory review of the authors' case.

Moreover, as a result of the internal investigation carried out with regard to police officer Mr. N., no evidence was found to corroborate the authors' allegations against him. On 20 April 2011, the case file materials concerning the investigation and the supervisory review proceedings were destroyed, following the authors' request and in accordance with the retention schedule.

Submissions from the author: 30 October 2017[26] and 29 February 2020[27]

In her submission dated 30 October 2017, the remaining author, Ms. T.V., informs the Committee that, due to the non-implementation of the Committee's Views by the State party, she has filed requests with the Office of the Head of Samarkand Region, asking him to arrange a meeting with the President of Uzbekistan. The author submits that she has a constitutionally guaranteed right to make such a demand, while the Committee's Views only corroborate her request. However, there was no reply to her requests.

In her submission dated 29 February 2020, Ms. T.V. recalls the Committee's findings in the Views adopted in March 2016 concerning the communication submitted by her and the other author, Mr. A.G., and the remedy that was supposed to be provided to them by the State party pursuant to the Committee's Views. In this regard, Ms. T.V. submits that she has tried unsuccessfully since the adoption of the Views to enforce the implementation of the Views by the State party. Ms. T.V. also submits that, in order to foster the implementation of the Views, she repeatedly contacted various governmental bodies, including the General Prosecutor's Office, the Office of the President and the Parliament, as well as the Ombudsman's Office of Samarkand Region. Unfortunately, she has not succeeded.

[26] The submission was acknowledged to the authors and transmitted to the State party for comments on 28 February 2020.

[27] The submission was acknowledged to one of the first authors, Ms. T.V., and transmitted to the State party for information on 21 July 2020.

Ms. T.V. also submits that, as a result of her persistent efforts, vis-à-vis the State party's authorities, to obtain remedy for the violation of her and the second author's rights, Mr. A.G. received death threats and had to leave Uzbekistan and settle in Ukraine. On 5 January 2014, Ms. T.V. was informed that he had passed away owing to cardiac failure, leaving the remaining author, who is a person with a disability, without a sole breadwinner and caregiver. Ms. T.V. states that the death of Mr. A.G. completely ruined her life, and blames the State party's authorities and their threats for what happened to him.

In view of the above, Ms. T.V. requests that the Committee engage with the State party in order to compel it to implement the Views in the present communication.

Committee's assessment:

(a) Conducting an investigation concerning the authors' apprehension on 10 October 2006 and their unlawful hospitalization until 19 October 2006 in the city's psychiatric hospital, and prosecuting those responsible: C

(b) Providing compensation and reimbursement of legal costs: C

(c) Non-repetition: No information

Committee's decision: Follow-up dialogue ongoing.