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Summary record of the 3731st meeting

Held via videoconference on Wednesday, 22 July 2020, at 4 p.m. Central European Time

Chair: Mr. Fathalla

Contents

Follow-up to Views under the Optional Protocol to the Covenant

Organizational and other matters, including the adoption of the report of the Working
Group on Communications (*continued*)

*Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful
assembly) (continued)*

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The meeting was called to order at 4.05 p.m.

Follow-up to Views under the Optional Protocol to the Covenant *(continued)*

Progress report by the Special Rapporteur for follow-up to Views (CCPR/C/128/R.3)

1. **The Chair**, recalling that the Committee's 128th session had been suspended on account of the coronavirus disease (COVID-19) pandemic, invited the Special Rapporteur for follow-up to Views to present the second draft report that the Committee had been due to consider at that session.
2. **Mr. Zimmermann** (Special Rapporteur for follow-up to Views), introducing the report, said that, in addition to the changes adopted at the Committee's 3723rd meeting to streamline the follow-up procedure, it had been agreed that a new category, "No information", would be established to indicate that there was insufficient information regarding implementation of the Committee's Views.
3. Referring to case No. 2290/2013 (*Fofana v. Ecuador*), he said that the State party had taken positive steps to comply with its obligations under the Convention, including expunging all criminal records pertaining to the author, as well as convening a workshop on human rights for civil servants dealing with immigration control. However, the State party's submission that it had fully implemented the Committee's Views was disputed by the author, since he had received neither compensation nor a public apology from the State party. Furthermore, the State party had done little to prevent similar violations in the future, the human rights workshop being the one action taken in that regard.
4. He therefore proposed that the Committee should assign an A grade for the expunging of the author's criminal records and C grades for the State party's efforts to provide comprehensive reparation, make a public apology and ensure non-repetition of similar violations, and that it should decide to keep the follow-up dialogue open.
5. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal regarding case No. 2290/2013.
6. *It was so decided.*
7. **Mr. Zimmermann**, referring to case No. 2668/2015 (*Tiina Sanila-Aikio v. Finland*), said that the Executive Board of the Sámi Parliament, on the grounds of the Views adopted by the Committee, had requested the Supreme Administrative Court to annul its decisions of 26 November 2011 and 30 September 2015 concerning 97 individuals who were on the electoral roll. The Court had rejected the request after concluding that it did not contain any of the grounds referred to in the Administrative Judicial Procedure Act for annulling decisions. The Electoral Committee of the Sámi Parliament had subsequently itself removed the said 97 individuals from the electoral roll. As to the Committee's recommendation that the State party should review section 3 of the Sámi Parliament Act, the State party submitted that there had been insufficient time to review and, if necessary, amend the Act before the Sámi Parliament elections. The author contended that the State party had taken insufficient steps to give effect to the Committee's Views; she furthermore indicated that additional communications had been submitted to the Committee on the same subject matter.
8. He therefore proposed that the Committee should assign a C grade for full reparation, given that the original decision handed down by the Supreme Administrative Court had ultimately been upheld; a C grade for the review of section 3 of the Act on the Sámi Parliament, since the section had yet to be amended; and a C grade for non-repetition, as the fact that section 3 of the Act remained in force posed a risk of similar violations in the future. He further proposed that the Committee should keep the follow-up dialogue open.
9. **Mr. Shany** said that while he was generally in agreement with the Special Rapporteur's proposed assessments in the case, he wondered if the State party's stated intention to undertake a review of section 3 of the Act on the Sámi Parliament should be acknowledged as progress and that the Committee should therefore assign a B grade in connection with the review, even if it had not yet been carried out.
10. **Mr. Zyberi** said that the Committee's recommendation for "full reparation" had been that the 97 people identified by the Sámi Parliament should be removed from the electoral roll; in effect, that recommendation had been implemented, even if it had not been by the

Supreme Administrative Court. He therefore proposed that the Committee should consider assigning a B grade for full reparation.

11. **Mr. Santos Pais** said that the review of section 3 of the Act on the Sámi Parliament had been pending even at the time that the Committee had adopted its Views on the case. It seemed, therefore, that no real progress had been achieved, especially given the Supreme Administrative Court's refusal to annul its previous decisions in the matter. In effect, the Court could still determine who could stand for election to the Sámi Parliament. As for the removal of 97 individuals from the electoral roll of the Sámi Parliament, the decision had been taken by the Sámi Parliament, not by the State party; the Committee should not therefore assign a B grade to the State party's efforts to provide the author with an effective remedy and full reparation.

12. **Ms. Kran** said that she wished to commend the steps taken to streamline the follow-up procedure, which would undoubtedly increase the Committee's efficiency and prove useful in documenting the progress made by States parties in implementing the Committee's Views. As for the case under consideration, she agreed with the ratings and decision proposed by the Special Rapporteur, as supported by Mr. Santos Pais.

13. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal regarding case No. 2668/2015.

14. *It was so decided.*

15. **Mr. Zimmermann**, referring to case No. 1744/2007 (*Narrain et al. v. Mauritius*), said it was worth noting that the case in question had featured in a 2013 progress report by the then Special Rapporteur for follow-up to Views; the few developments that had taken place since were less than satisfactory. In July 2014, the State party had amended its Constitution to comply with the Views of the Committee by outlawing the disqualification of otherwise qualified candidates at a general election based upon the candidates' failure to classify themselves in one of the ethnicity- or religion-based categories. However, that amendment had been only temporary and had ceased to apply following the elections held in December 2014. The authors had once again been disqualified as candidates to the general election of 2019 owing to their non-compliance with the compulsory classification under the National Assembly Elections Regulations. The State party maintained that it had taken steps to find a permanent solution to the problem and that it remained committed to doing so; however, no concrete action had been taken in that regard.

16. He therefore proposed assigning grades of C for both effective remedy and non-repetition, although he would consider changing the latter to a B grade because of the ongoing process to amend the Constitution more permanently. He further proposed that the Committee should keep the follow-up dialogue open, because the Constitution (Amendment) Bill, which inter alia would obviate the need for prospective candidates to declare their community in their nomination papers, had not yet been approved by the National Assembly.

17. **Mr. Shany**, noting that amending a Constitution was a major endeavour, proposed that the Committee should assign a B grade for non-repetition. He said that the Committee should acknowledge the State party's past efforts in adopting one amendment and its current efforts to establish the political conditions to do so again. Furthermore, in accordance with the usual format of the reports of the Special Rapporteur for follow-up to Views, the paragraph setting out the Committee's decision should not include a statement of the reasons for the decision.

18. **Ms. Kran** said that she would be in favour of a B grade for effective remedy, in order to reflect the progress the State party had demonstrated in that regard.

19. **The Chair**, noting that many Committee members had agreed, via the online chat function, that B grades should be assigned for both effective remedy and non-repetition, and that the statement of reasons for the decision should be deleted, said he took it that the Committee wished to adopt the Special Rapporteur's proposal, as amended, regarding case No. 1744/2007.

20. *It was so decided.*

21. **Mr. Santos Pais**, noting that there could be pedagogical reasons for including a statement of the reasons for a Committee's decision, proposed placing the matter on the agenda as part of the Committee's consideration of methods of work.

22. **The Chair** said he took it that the Committee agreed to Mr. Santos Pais's proposal.
23. *It was so decided.*
24. **Mr. Zimmermann**, referring to case No. 2502/2014 (*Miller and Carroll v. New Zealand*), said that both authors were still being held in preventive detention and both had appeared before the parole board on several occasions but had been denied parole each time. The State party maintained that it was pursuing legislative reform, including a recent initiative that sought to transform the criminal justice system and was expected to generate changes in the parole procedure. For the time being, no remedy had been provided to the authors; he therefore proposed that the Committee should assign C grades for full reparation and the State party's reconsideration of the authors' detention and facilitation of their release and a B grade for non-repetition. He further proposed that the Committee should keep the follow-up dialogue open.
25. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal, regarding case No. 2502/2014.
26. *It was so decided.*
27. **Mr. Zimmermann**, referring to case No. 2250/2013 (*Katashynskiy v. Ukraine*), said that the State party had provided extensive information on the dissemination of the Committee's Views and on the legal framework in place to guarantee electoral rights. However, the author's counsel submitted that national legislation did not provide for a procedure to be followed in the event of the loss or theft of ballot papers and that only the operative part of the Committee's Views had been published. Moreover, the author had not been provided with the opportunity to seek a review of the decisions made in his case.
28. He therefore proposed that the Committee should assign a C grade for adequate compensation and appropriate measures of satisfaction and a C grade for non-repetition. He further proposed that the Committee should keep the dialogue open and should request a meeting with a representative of the State party at one of its future sessions.
29. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal regarding case No. 2250/2013.
30. *It was so decided.*
31. **Mr. Zimmermann**, referring to case No. 1769/2008 (*Bondar v. Uzbekistan*), said that the author submitted that her husband, Mr. Ismailov, had made several attempts to have his case reviewed. When the Judicial Panel of the Supreme Court had examined her husband's case under the supervisory review procedure, its members had made oral announcements that had subsequently been contradicted by the written decision issued. The author's husband had been due for release on 23 June 2020, but the Committee had yet to receive an update on his situation.
32. He therefore proposed that the Committee should assign a C grade for retrial or release, an E grade for appropriate reparation, including compensation, and a C grade for non-repetition. He further proposed that the Committee should keep the dialogue open. He had held a meeting with a representative of the State party and had declined an invitation to visit the country. The Committee would request the State party to confirm that the author's husband had been released from prison.
33. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal regarding case No. 1769/2008.
34. *It was so decided.*
35. **Mr. Zimmermann**, referring to case No. 2430/2014 (*Allakulov v. Uzbekistan*), said the author submitted that, although he had requested the retraction of the allegedly defamatory newspaper article, the notice of retraction that he had presented had yet to be published. The author stated that he had not been reinstated in his position as a university rector and remained unemployed.
36. He therefore proposed that the Committee should assign a C grade for adequate compensation and a C grade for measures of satisfaction aimed at restoring reputation, honour, dignity and professional standing. He further proposed that the Committee should

indicate that no information had been provided in respect of non-repetition and should keep the dialogue open.

37. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal regarding case No. 2430/2014.

38. *It was so decided.*

39. *The progress report by the Special Rapporteur for follow-up to Views, as a whole, as amended, was adopted.*

Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly) (*continued*)

40. **The Chair** said that he invited the Committee to resume its second reading of draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly).

41. **Mr. Heyns** (Rapporteur for the general comment) said that the Committee would continue its discussion on the outstanding points of those paragraphs of the draft general comment on which it had yet to reach agreement.

Paragraph 104 (*continued*)

42. **Mr. Heyns** said that he had further revised paragraph 104 in the light of the proposals made at the previous meeting so that it now read:

The State is ultimately responsible for law enforcement during an assembly and may delegate tasks to private security providers only in exceptional circumstances. In such cases, the State remains responsible for their conduct.

43. **The Chair** said he took it that the Committee wished to approve the Rapporteur's proposal for paragraph 104.

44. *Paragraph 104, as amended, was adopted.*

Paragraph 107 (*continued*)

45. **Mr. Heyns** said that he proposed deleting the third sentence of the version that he had presented at the previous meeting. He further proposed inserting a new sentence, which would become the penultimate sentence and would read: "However, States parties must not rely on derogation from the right of peaceful assembly if they are able to attain their objectives by imposing restrictions in terms of article 21."

46. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 107.

47. *It was so decided.*

Paragraph 109 (*continued*)

48. **Mr. Heyns** said that, as currently worded, the third sentence added little to the paragraph. He proposed that it should be amended to read: "In such a circumstance, they may be targeted only to the extent that they are not otherwise protected under international law from attack." He further proposed that the words "against participants in an assembly" should be inserted before "is subject to" in the penultimate sentence and that, in the last sentence, the words "a primary" should be replaced with "an important".

49. **Mr. Shany** said that, while he supported the proposed amendment of the third sentence, he was not in favour of inserting the words "against participants in an assembly" in the penultimate one. In his view, the insertion of those words could be interpreted as undermining the message conveyed in the first two sentences and would weaken the paragraph as a whole.

50. **Mr. Heyns** said that the aim of his proposal had been to link the penultimate sentence to the previous ones. He proposed inserting the words "in this context" instead.

51. *Paragraph 109, as amended, was adopted.*

Paragraph 111 (continued)

52. **Mr. Heyns** said that, in order to bring the last sentence of the paragraph more into line with the wording of article 7 of the Covenant, he proposed amending it to read: “In an extreme case, where committed as part of a widespread or systematic attack and where other relevant criteria are met, unlawful use of force against participants in peaceful assemblies may also constitute a crime against humanity.”

53. **Ms. Pazartzis** said that the Rapporteur’s proposed wording struck her as unclear.

54. **Mr. Santos Pais** said that, for greater clarity, the last sentence should be reordered so that it began: “In an extreme case, unlawful use of force, where committed ...”.

55. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 111.

56. *It was so decided.*

Paragraph 112 (continued)

57. **Mr. Heyns** said that he had amended the second sentence of the paragraph to read: “Official decisions restricting the exercise of assembly rights must be open to legal challenge in a process meeting fair and public hearing requirements (art. 14 (1)).”

58. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 112.

59. *It was so decided.*

Paragraph 113 (continued)

60. **Mr. Heyns** said that, in the light of the comments and suggestions made by members, he proposed that the revised version of the paragraph that he had presented at the previous meeting should be amended further to read: “At the same time, participation in peaceful assemblies may be restricted in accordance with article 21 in order to protect the rights of others under the Covenant.”

61. **Mr. Zyberi** said that the question of the restrictions that could be imposed on the right of peaceful assembly should be addressed in greater detail in the paragraph.

62. **Mr. Heyns** said that the aim of the paragraph was to convey the idea that, while some of the other rights enshrined in the Covenant supported the right of peaceful assembly, others supported the imposition of restrictions on that right in certain circumstances. The question of the restrictions that could be imposed on the right of peaceful assembly were dealt with elsewhere in the draft.

63. **Mr. Shany** said that he proposed removing the words “under the Covenant”, which made the sentence too restrictive. Other parts of the general comment made reference also to rights that were not necessarily associated with the Covenant.

64. **Mr. Heyns** said that he accepted Mr. Shany’s proposal, which would thus make it possible for the idea behind the sentence to include economic, social and cultural rights.

65. **Mr. Zyberi** said that simply deleting “under the Covenant” left the comment excessively vague. The sentence required some sort of reference to a legal framework. He proposed using the wording “the rights of others under human rights law”.

66. **Mr. Heyns** said that the wording of article 21 of the Covenant referred to “the rights and freedoms of others”, and proposed that the general comment should follow that wording. Paragraph 53 of the general comment explained the meaning of that term in the context of the general comment.

67. *Paragraph 113, as amended, was adopted.*

Late changes to the draft

68. **Mr. Heyns** said that he wished to explain some editorial and other changes that he had made to the text of the general comment with a view to reducing the word count and improving coherence. As the Committee had decided subsequently to stop using the formulation “the right of peaceful assembly is absolute”, he had removed those words from the text of paragraph 8. He had also made minor adjustments to paragraphs 11, 12, 27 and 28, most often to shorten the text. During past discussions, some Committee members had raised the possibility of removing paragraph 29. Accordingly, in view of the need to reduce the word count, he proposed deleting that paragraph entirely.

69. *It was so decided.*

70. **Mr. Heyns** said that the penultimate sentence of paragraph 37 (“For example, publicity for an upcoming assembly cannot be penalized absent compelling evidence of what dangers were created by the early distribution of the information”) had previously been included to refer to a part of the text on notification that had since been deleted. He thus proposed that the sentence should be deleted also.

71. *It was so decided.*

72. In paragraph 38, a sentence containing a repetition had been replaced with a shorter one. In paragraph 41, he said that he was somewhat uncomfortable with the wording that called for authorities to “first select less-intrusive rather than more-intrusive measures”. He noted from the online chat function that Ms. Pazartzis and Mr. Shany proposed using the words “least intrusive” instead, and he proposed adopting that wording.

73. *It was so decided.*

74. Paragraph 70 addressed the issue of face coverings, and the Committee had left the opening phrase of the first sentence in square brackets. During the prior discussion, Committee members had pointed to the opposing needs for transparency and for respect for people’s right to wear what they wished, including face coverings. One of the proposals had been to emphasize the need for transparency in place of the opening phrase, but he was afraid that doing so might create the false impression that the Committee considered that individuals must be transparent in their presentation when taking part in peaceful assemblies. He therefore proposed deleting the first phrase.

75. **Mr. Zyberi** said that the opening phrase did not accurately convey the idea that he and other Committee members had wished to communicate in the text, which was that, in peaceful assemblies, people should generally be able to see and communicate with one another. With the exceptions of carnivals or assemblies in authoritarian States where there was a fear of reprisals, the norm was to have openness in peaceful assemblies. If that idea was not included at all in the paragraph, it might be somewhat problematic. Having said that, he agreed that the opening phrase, as currently cast, should be deleted.

76. **The Chair** said he took it that the Committee agreed that the opening phrase should be deleted.

77. *It was so decided.*

78. **Mr. Heyns** said that the order of the paragraphs had been rearranged between paragraphs 75 and 79 and that some minor editing changes had been made to the paragraphs after paragraph 93, which had been adopted by the Committee at the meeting held earlier that day. He would like to know whether the Committee considered that sections 7 and 8 should be merged, with the issues taken up in section 7 being subsumed into section 8. Such a change would not alter the substance, but it would require some re-writing. In his view, it would be more coherent to leave the text with the sections separate so as to respect the logical build-up in the text. He would be interested to hear the views of Committee members at the next meeting. A final version of the general comment would be distributed to Committee members the following day to allow the Committee to adopt the text, section by section.

The meeting rose at 6 p.m.