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Lidskoprávní organizace Práva a svobody občanů Turkmenistánu z.s.
Права и Свободы Граждан Туркменистана
Rights and Freedoms of Turkmenistan's Citizens

To: Ms. Atayeva Aksoltan Torayevna, Ambassador Extraordinary and Plenipotentiary of Turkmenistan to the United Nations, New York

Mr. Hajiyev Vepa, Ambassador Extraordinary and Plenipotentiary of Turkmenistan to the Swiss Confederation and Permanent Representative of Turkmenistan to the United Nations Office and other international organizations in Geneva

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Subject: Implementation of UN Human Rights Committee Decision Regarding Mr. Geldy Kyarizov - CCPR/C/141/D/3097/2018

5 September 2024

Dear Ambassadors,

We, as representatives of Mr. Geldy Kyarizov, are writing to you regarding an important matter concerning the decision issued by the United Nations Human Rights Committee on 9 July 2024.

The Human Rights Committee, as the international body responsible for overseeing compliance with the International Covenant on Civil and Political Rights (ICCPR), has issued a decision on the complaint filed by Mr. Geldy Kyarizov against the State of Turkmenistan. This complaint was submitted in response to egregious violations of Mr. Kyarizov's human rights, including unlawful detention, torture, and the confiscation of his property (see paragraphs 2.1 to 2.7 and 3.1 to 3.6 of the decision).

After a thorough examination of the case and all the evidence presented, the Committee concluded that Turkmenistan is obligated to fully compensate Mr. Kyarizov for

the violations of his rights. The Committee determined that adequate reparation includes both financial compensation and measures to prevent similar violations in the future (paragraphs 7 and 8 of the decision). Specifically, the Committee has mandated that Turkmenistan provide adequate compensation to Mr. Kyarizov, who has suffered severe physical and psychological harm, including a heart attack resulting in left-side paralysis and the loss of half of his body weight.

From a material perspective, Mr. Kyarizov has lost his property, including his horses and the right to practice his profession, resulting in significant financial losses. An independent expert assessment has placed the value of his horses at $6,771,540,000 USD, as detailed in Annex 1. In addition to this, the total claim of $7,000,000,000 USD includes compensation for the moral and physical damages Mr. Kyarizov has endured due to his unlawful detention, torture, and the confiscation of his property. This assessment is supported by Mr. A.S. Klimuk, an esteemed expert in the Akhal-Teke breed, who has verified the high value of the horses confiscated by the State of Turkmenistan. The valuation documents, including Mr. Klimuk's expert opinion, are attached to this letter.

In light of Turkmenistan's binding obligations under the ICCPR and the authoritative weight of the Human Rights Committee's decisions, we strongly urge you to take immediate and decisive action to ensure full compliance with this ruling. This is not merely a step towards restoring justice for Mr. Kyarizov; it is an unequivocal demonstration of Turkmenistan's commitment to upholding the rule of law and honoring its international legal commitments.

Turkmenistan's fulfillment of its international obligations is central to its standing and credibility within the global community. As a signatory to key human rights treaties, including the ICCPR, Turkmenistan is legally bound to provide effective remedies for human rights violations, such as full compensation, and to implement the Committee's decisions without delay. There is a growing international consensus that such decisions are obligatory for governments to fulfill, as evidenced by the actions of other states.

For instance, in **Kyrgyzstan**, the Constitutional Chamber of the Supreme Court ruled that decisions from the Human Rights Committee must be enforced, compelling the government to provide compensation for human rights violations. The Court emphasized that Kyrgyzstan's obligations under the ICCPR require it to fulfill these decisions, marking an important precedent for ensuring accountability at the national level. Similarly, both **Spain** and **Argentina** have acted upon decisions from international human rights bodies, setting strong examples by recognizing their binding nature and providing compensation to victims in alignment with their international obligations.

In addition, **Uzbekistan's response** to the Human Rights Committee's decision in *Tohirjon Yakubov v. Uzbekistan* (Communication No. 2041/2011) demonstrates the

practical steps a government can take to meet its international commitments. In this case, Uzbekistan engaged in negotiations and provided compensation to the victim, illustrating the country's recognition of its obligations under international law. Moreover, in the case of **Mavlonov and Sa'di v. Uzbekistan** (Communication No. 1334/2004), Uzbekistan adhered to the Committee's decision by addressing domestic violations and providing compensation, showcasing a state's capacity to implement decisions with tangible actions.

Failure to voluntarily comply with the Human Rights Committee's decision could expose Turkmenistan to significant legal and financial consequences. Through the principle of **universal jurisdiction**, courts in other countries could initiate enforcement actions, potentially leading to the **freezing or seizure of governmental assets abroad**. Such measures have been taken against other states that failed to adhere to international rulings, targeting foreign-held assets, bank accounts, and properties. These enforcement actions could severely impact Turkmenistan's financial standing and diplomatic relations, especially as **non-compliance** with human rights obligations is often scrutinized in international forums such as the **Universal Periodic Review (UPR)** of the Human Rights Council.

By choosing to engage in negotiations and promptly settling the compensation, Turkmenistan has the opportunity to avert these serious legal and financial risks, while affirming its commitment to upholding international human rights norms. Compliance would further enhance Turkmenistan's standing within the global community, allowing it to avoid reputational damage and the material risks posed by enforcement through foreign courts.

In addition, as part of its binding obligations, Turkmenistan is required to submit a **comprehensive report** to the Human Rights Committee—typically within 180 days—detailing the steps taken to implement the Committee's decision. This report should provide a clear timeline for compensating Mr. Kyarizov and outline the necessary policy reforms to prevent future violations. Failing to submit this report would further underscore non-compliance with the ICCPR, compounding the legal and diplomatic consequences.

It is critical to remind the Government that continued failure to comply with the Committee's decision may lead to **serious diplomatic repercussions** and further harm Turkmenistan's international reputation, particularly during reviews such as the UPR, where its human rights record will face close scrutiny. Compliance with this decision is not only a legal obligation but an opportunity for Turkmenistan to demonstrate leadership in the field of human rights and set a positive precedent for the future.

We therefore request that you keep us fully informed of the actions being taken to comply with the Committee's decision and of Turkmenistan's willingness to engage with its obligations without further delay.

Thank you for your immediate attention to this critical matter. We look forward to your swift response and are hopeful for a positive resolution that upholds the principles of human rights and justice.

Sincerely,

Sharof Azizov
Executive Director
Justice pour Tous Internationale

Diana Serebryannik.
Chief Executive Officer
Lidskoprávní organizace Práva a svobody občanů Turkmenistánu z.s.

List of Annexes:

1. **Annex 1:** Expert Opinion of Mr. Geldy Kyarizov on the Valuation of Akhal-Teke Horses, providing a detailed list of the horses confiscated by the State of Turkmenistan and their estimated values.
2. **Annex 2:** Letter of 10 October 2019 from Mr. Alexander Klimuk, confirming the expertise of Mr. Geldy Kyarizov in Akhal-Teke horse breeding and the high quality of his horses.
3. **Annex 3:** Decision of the United Nations Human Rights Committee, CCPR-C-141-D-3097/2018, outlining the violations of Mr. Kyarizov's human rights and the obligations of the State of Turkmenistan to provide compensation.

ANNEX 3

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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REFERENCE: G/SO 215/51 TKM (25)
MT/MA 3097/2018

31 July 2024

Dear Sirs,

I have the honour to transmit to you herewith, the (advance unedited) text of the Views adopted by the Human Rights Committee on 9 July 2024 concerning communication No. 3097/2018 which you submitted to the Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Geldy Kyarizov.

A joint opinion signed by two Committee members is appended to the present Views.

In accordance with the established practice, the text of the Views will be made public. The text of the Views in Russian will be transmitted to you as soon as it is available.

Yours sincerely,

Dina Rossbacher
Chief
Petitions Section

Mr. Timur Misrikhanov
Sharof Azizov
E-mail: registry@jpti.ch

Distr.: General
25 July 2024

Original: English

Advance unedited version

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3097/2018*,**,***

Communication submitted by:	Geldy Kyarizov (represented by counsel Timur Misrikhanov)
Alleged victims:	The author
State party:	Turkmenistan
Date of communication:	15 October 2016 (initial submission)
Document references:	Special Rapporteur's rule 92 decision, transmitted to the State party on 10 January 2018 (not issued in document form)
Date of adoption of Views:	9 July 2024
Subject matter:	Imprisonment as a result of unfair trial, poor conditions of detention.
Procedural issue:	Lack of cooperation by the State party
Substantive issue:	Torture, unlawful detention, conditions of detention, unfair trial, freedom of movement – own country, family rights
Articles of the Covenant:	7, 9 (1), 9 (2), 9 (4), 10 (1), 12 (2), 14 (1), 14 (3)(g), 14 (5) and 17
Articles of the Optional Protocol:	1

1. The author of the communication is Mr. Geldy Kyarizov, a citizen of Turkmenistan, born in 1951. He claims that Turkmenistan violated his rights under articles 7, 9 (1), 9 (4), 10 (1), 12 (2), 14 (1), 14 (3)(g), 14 (5) and 17 of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The author is represented by counsel.

* Adopted by the Committee at its 141th session (1-23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gomez Martinez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernan Quezada Cabrera, José Manuel Santos Pais, Changrok Soh, Tijana Surlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** A joint opinion by Committee members Carlos Gómez Martínez and José Santos Pais (partially dissenting) is annexed to the present Views.

Please recycle

Facts as presented by the author

2.1 From 1994, the author was the President of the International Association of Akhal-Teke horse breeding in Ashgabat. In 1997, he became a director of the State-owned horse-breeding company "Turkmenatlary". On 30 January 2002, the author was detained by the officers of the Ministry of National Security. For several days, he was held at the temporary detention facility of the Ministry, without being formally charged. Until 6 February 2002, when the prosecutor issued a detention order, his detention was not registered, and his family was not informed about his whereabouts. He was held for 8 days without being informed of the charges. Only on 26 February 2002, a statement of indictment was signed by the Prosecutor General.

2.2 From the moment he was detained, he was psychologically pressured and threatened of torture by national security officers to force him to confess in defrauding the state-owned company. When the authorities arrested and tortured his younger brother, the author was forced to publicly confess guilt national television. After that public forced confession, he suffered a heart attack and a left-sided paralysis.

2.3 On 4 April 2002, the Ashgabat City Court found him guilty under articles 181 (1), 181 (2) for abuse of office and article 188 (1) for negligence. The court sentenced him to six years in a general regime prison. He was transferred to serve his sentence in prison No. LB-K/12.

2.4 In August 2006, the author was transferred to a strict regime prison No. AN-T/2, without a relevant court decision changing the regime of imprisonment. The author's complaints to the prison director, the prosecutor, and the Ministry of Interior concerning his unlawful transfer were not answered. The prison director told him that he had no right to complain, no name and no last name, and from now on he was "No.3". His family which was not informed about his transfer, did not have any information about his whereabouts for five months. His wife's attempts to get information from the authorities about his status and whereabouts were unaddressed and his own requests to receive family visits were denied.

2.5 In prison No. AN-T/2, the author was held with two other persons in a 7 x 3.5 m2 cell. The sanitary facilities were not separated from the rest of the cell. Two small windows did not have glass and were closed with metal blinds. The heating often did not work, and the cell was extremely cold. The author was completely cut off from the rest of the world, with no access to newspapers, TV or radio. The daily meal consisted of boiled grain soup, with no meat or vegetables, and a piece of black bread, often moulded. There was only rusty tap water to drink which was accessible for half an hour, in the morning and in the evening. One piece of soap, a size of two fingers, was provided once a week. Provided there was water, he had access entitled to one 20-minute cold shower per week, during which he also had to wash his cloths and to take outside to dry in the sun his bed linen. Shoes, cloths and bed linen were changed once a year. There was no access to medical services. As a result of these conditions, the author lost half of his weight. He weighed 55 kilos upon release.

2.6 The author was released in 2007 under an amnesty. After he was released, he learned that the transfer to prison AN-T/2 was a revenge for his wife's complaints that she submitted to several independent media agencies abroad and foreign embassies in Turkmenistan. In Turkmenistan, she also complained to the prosecutor's office, on 15 occasions, starting from 2002 to 2007. She also complained to the Ministry of Interior, sending altogether ten complaints. She also submitted two complaints to the Supreme Court of Turkmenistan. All her complaints were either rejected or ignored.

2.7 The author claims that the authorities confiscated and demolished his house and horse stables in 2007. The family had to rent land to continue the horse-breeding. In 2010, however, the author's 110 horses were confiscated. The family was left without means. In 2013, the author was forced to abandon his professional activity and to sign a statement to this effect. His phone was tapped, and his correspondence was censored. Him and his wife were often summoned to the prosecutor's office, criminal charges were brought against his wife. He needed a permission to move inside the country. The author attempted to leave Turkmenistan several times, in particular to seek medical treatment abroad. Only on 14 September 2015, he was able to leave for Russia.

The complaint

3.1 The author submits the conditions of detention in prison No. AN-T/2 amounted to violation of his rights under article 7 and 10 (1) of the Covenant.

3.2 The author submits that he was detained without any record from 30 January to 6 February 2002. His family was not informed about his whereabouts. He claims that he was not presented with charges for 8 days since his detention. The author claims that his rights under articles 9 (1) and 9 (4) of the Covenant were violated.

3.3 The author claims that the fact that he was forced to confess guilt and that the courts found him guilty without listening to his arguments, violates articles 14 (1), 14 (3) (g) and 14 (5) of the Covenant.

3.4 The author claims that he was not allowed to leave the country, in violation of article 12 of the Covenant.

3.5 The author alleges that being cut off from his family for 5 months in prison No. AN-T/2 violated his rights under article 17 of the Covenant.

3.6 The author claims, that he exhausted all domestic remedies available to him and that the domestic courts and all other authorities are under the control of the President of Turkmenistan. As to the delay in submission, the author submits that while he was in Turkmenistan, he did not have any chance to submit a complaint to the Committee, since he was concerned about his own security and security of his family members.

Lack of cooperation by the State party

4. By Note verbales of 10 January 2018, 13 November 2020 and 10 November 2021, the Committee requested the State party to submit to it information and observations on the admissibility and the merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. The Committee considers that in the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[1]

Issues and proceedings before the Committee

Considerations of admissibility

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

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

5.3 The Committee notes the author's claim that he has exhausted all available domestic remedies. In absence of submission to the contrary from the State party, the Committee finds the authors' claims admissible under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee notes the author's allegations that being cut off from his family for 5 months in prison No. AN-T/2 violated his rights under article 17 of the Covenant. The Committee considers that the author's claims fall under article 10 (1) of the Covenant and will consider them under this article.[2]

[1] See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4 and *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 4.

[2] See *Ortikov v. Uzbekistan* (CCPR/C/118/D/2317/2013), para. 10.4.

5.5 The Committee notes the author's allegations that the State party violated article 14 (1) and 14 (3) (g) of the Covenant. In regard of the author's claims under article 14 (3) (g), the Committee notes that there is no reference in the domestic court decisions to any confession of guilt by the author. In fact, the court acknowledged the author's plea of no guilt. The Committee notes that the author has not clarified any procedural or substantive flaws which would violate his right to fair trial under article 14 (1) of the Covenant. The Committee finds this part of the author's claim insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

5.6 The Committee notes the author's claim that article 14 (5) of the Covenant was violated. The Committee notes that the author does not clarify his claim. The Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and is inadmissible under article 2 of the Optional Protocol.

5.7 The Committee finds that the facts as presented by the author raise issues under articles 7, 9 (1), 9 (4), 10 (1), and 12 (2) of the Covenant and proceeds to the consideration of the merits.

Consideration of the merits

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

6.2 The Committee notes allegations of the author that he was arrested without an arrest order and that he was kept in incommunicado detention from 30 January to 6 February 2002; that he was not presented with charges until 8 days after his arrest, and that he was not able to contest his detention before a judge. The Committee recalls that deprivation of liberty is permissible only when occurring on such grounds and in accordance with such procedures as are established by law. In this case, the fact that the author was arrested without an arrest warrant and held incommunicado for at least 7 days makes his detention arbitrary.[3] As for the lack of judicial supervision of the author's detention, the Committee reiterates that the length of custody without judicial authorization should not exceed a few days.[4] The Committee thus concludes, in the absence of any challenge to these claims by the State party, that the circumstances in which the author was deprived of his liberty violate the provisions of articles 9 (1) and 9 (4) of the Covenant.

6.3 Regarding the author's claims that conditions of his detention in prison No. AN-T/2 amounted to violation of his rights under article 7 and 10 (1) of the Covenant, the Committee observes that the author has provided a detailed account of the conditions in which he was held (see para. 2.5 above). The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; and they must be treated humanely in accordance with the Standard Minimum Rules for the Treatment of Prisoners.[5] These include, in accordance with rules 10, 12, 17, 19 and 20 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing that shall be in no manner degrading or humiliating, provision of a separate bed, and provision of food of nutritional value adequate for health and strength.[6] The Committee considers, as it has repeatedly found in respect of similar substantiated claims, [7] that the author's conditions of detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human person. The Committee finds that the effect of the generally inadequate conditions of detention was even more unbearable for the author in view of his poor state of health, in particular his heart attack, a blood stroke and

[3] See *Komarovski v.* Turkmenistan (CCPR/C/93/D/1450/2006), para. 7.2.

[4] General Comment No. 8 regarding article 9 of the Covenant, para. 2.

[5] *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3 and *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2.

[6] *Dafnis v. Greece,* (CCPR/C/135/D/3740/2020), para. 8.4, Alakuş v. Türkiye (CCPR/C/135/D/3736/2020), para. 10.8.

[7] *See, among others, Komarovski v. Turkmenistan* (CCPR/C/93/D/1450/2006), para.7.5; *Bozbey v. Turkmenistan* (CCPR/C/100/D/1530/2006), para 7.3, *Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012), para. 7.3.

partial paralysis, which he suffered since his arrest on 30 January 2002. In absence of any arguments to the contrary from the State party, the Committee finds that the conditions of detention in prison No. AN-T/2 amounted to violation of articles 7 and 10 (1) of the Covenant.

6.4 The Committee also notes the author's claim that during five months in prison No. AN-T/2 he was held incommunicado. His family did not know about his transfer to a new prison. He could not receive correspondence or visits from his family. The Committee recalls that incommunicado detention is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.[8] The Committee thus finds that holding the author in incommunicado detention, without a possibility to communicate with his family, violated his rights under article 10 (1) of the Covenant.

6.5 The Committee notes the author's claims that he tried on several occasions but was not allowed to exit Turkmenistan, in particular for medical treatment. The Committee recalls its General Comment 27 on article 12, where it stated that the liberty of movement is indispensable condition for the free development of an individual. It however also recalls that the rights under article 12 are not absolute. Paragraph 3 of article 12 provides for exceptional cases in which the exercise of rights covered by article 12 may be restricted. In accordance with the provisions of that paragraph, a State party may restrict the exercise of those rights only if the restrictions are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in Covenant. In General Comment 27, the Committee noted that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must confirm to the principle of proportionality; they must be appropriate to achieve their protective function."[9] In the present case, the State party has not provided any information to explain the necessity of the restriction or justify it in terms of its proportionality. In the absence of information from the State party, the Committee concludes that there has been a violation of article 12 of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7, 9 (1), 9 (4), 10 (1), and 12 (2) of the Covenant, and of article 1 of the Optional Protocol.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide 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 to provide the author with adequate compensation for the violation of his rights. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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

[8] See *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.8 and *Ortikov v. Uzbekistan*, para.10.4.

[9] General Comment 27, para. 14.

Annex:

Joint opinion by Committee members Carlos Gómez Martínez and José Santos Pais (partially dissenting)

1. We concur with the finding by the Committee of a violation of the author's rights under articles 7, 9 (1), 9 (4), 10 (1), and 12 (2) of the Covenant, and of article 1 of the Optional Protocol of the Covenant.

We however have doubts on whether, as stated in para 6.4 of the Views, any incommunicado detention, irrespective of its duration, is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.

2. The practice of incommunicado detention seems to imply that nobody, apart from the authorities, knows where the detainee is kept. Without any access to family members, lawyers or doctors, victims are particularly vulnerable to torture and the authorities, by denying the arrest, try to avoid any type of accountability.

3. In the present Views, the incommunicado detention was, in fact, inconsistent with the obligation to treat the author humanely, since he remained for 5 months incommunicado, his family did not know about his transfer to a new prison, and he could not receive correspondence or visits from his family during this time.

But there may be other situations where the detained person is not able to immediately communicate with his lawyer or a relative and this does not necessarily amount to a violation of his/her dignity or to inhuman treatment.

4. The person may for instance be subject to solitary confinement for health, disciplinary or other justifiable reasons, or temporarily prevented to communicate with other persons, for instance other defendants, as in case of highly complex organized crime, at the outset of the criminal investigation.

The person may also have been detained to be conducted before a judicial officer, which, in some countries, may entail considerable distances. During this period, although unable to communicate, the author is under the control and responsibility of law enforcement officers and therefore not exactly in a situation of incommunicado since the authorities don't pretend to conceal the detention.

5. The case law cited in footnote 16 in support of the contested para 6.4 of the present Views does not seem to be particularly appropriate to support the assertion contained therein.

In communication 1781/2008, Berzig v Algeria, we are before a case of enforced disappearance. The author's son disappeared following his arrest in November 1994, therefore for several years, and the authorities denied detaining him even though there were witnesses to his arrest. The Committee could therefore rightly refer that incommunicado detention, in such a situation, creates an unacceptable risk of violation of the right to life, since victims are at the mercy of their jailers who, by the very nature of the circumstances, are subject to no oversight (ibidem, para 8.4).

The Committee further recognized the degree of suffering involved in being held indefinitely without contact with the outside world, and recalled its general comment No. 20 on article 7, which recommends that States parties should make provision against incommunicado detention (ibidem, para 8.5).

Thus, the Committee concluded that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of the incommunicado detention verified in that communication, the Committee found a violation of article 10 (1) of the Covenant (ibidem, para 8.8).

6. In communication 2317/2013, Kayum Ortikov v Uzbekistan, the Committee just reiterated that persons deprived of their liberty may not be subjected to any hardship or

constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. It also observed that incommunicado detention is inconsistent with the obligation to treat detainees humanely and with respect for their dignity (ibidem, para 10.4).

7. In the present Views, we are thus using case law originating from situations of enforced disappearance and applying it to other situations where the degree of isolation and hardship are not comparable. The main concern with incommunicado detention is in fact the possibility it offers for the practice of torture or other inhuman treatment without the necessary oversight and monitoring, namely by judicial authorities.

8. In general comment 20, the Committee was much more prudent in its approach, recommending in para 11:

"To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention."

8. We would thus have preferred a slightly different formulation in para 6.4 of the present Views: "The Committee recalls that keeping a person for 5 months in incommunicado detention, as in the present Views, is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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REFERENCE: CEDAW/OP TKM (1)
AB/TK/AK 166/2020

11 June 2024

Dear Ms. Serebryannik,

I have the honour to transmit to you herewith, the text of the decision (advance unedited version) adopted by the Committee on the Elimination of Discrimination against Women on 31 May 2024, concerning communication No. 166/2021, which you submitted to the Committee for consideration under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on behalf of Y.S.

The Committee decided that the communication is inadmissible. In accordance with established practice, the text of the Committee's decision will be made public, without disclosing the author's identity.

Yours sincerely,

Ibrahim Salama
Chief
Human Rights Treaties Branch

Ms. Diana Serebryannik
E-mail:dserebryannik@protonmail.com

CEDAW/C/88/D/166/2021

Advance unedited version

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 166/2021*,**

Communication submitted by:	Y.S. (represented by D.S.)
Alleged victim:	The author
State party:	Turkmenistan
Date of communication:	9 December 2019
References:	Transmitted to the State party on 18 February 2021 (not issued in document form)
Date of adoption of decision:	31 May 2024
Subject matter:	Discrimination based on sex, gender and ethnicity of a non-Turkmen Jewish woman and alleged threats of sexual violence and retaliation by high-level officials
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Discrimination on the ground of sex, gender and ethnicity; gender-based violence; property
Articles of the Convention:	1, 2, 5, 13, 15 and 24
Articles of the Optional Protocol:	4 (1)

* Adopted by the Committee at its eighty-eighth session (13 – 31 May 2024).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Nahla Haidar, Marianne Mikko, Maya Morsy, Ana Pelaez Narvaez, Elgun Safarov, Natasha Stott Despoja and Genoveva Tisheva.

Please recycle

1. The communication is submitted by Y.S., a national of Turkmenistan and the Russian Federation, born in 1973. The author claims to be a victim of a violation by the State party of her rights under articles 1, 2, 5, 13, 15 and 24 of the Convention. The State party acceded to the Optional Protocol to the Convention on 20 May 2009. The author is represented by her sister, D.S.

Facts as submitted by the author

2.1 The author was a co-founder and director of the Akhal Yurt company, which bred and trained purebred Akhal-Teke horses, considered a national treasure of Turkmenistan and among the finest in the world. She and her spouse ran and owned the company at 50 per cent each. The present facts are part of a longer history of discrimination against the family, after her spouse, who was Minister of Horse Breeding, fell out of favour with the authorities and was sentenced to six years of imprisonment for negligence and abuse of office.[1] The author assumed sole responsibility for the company following his imprisonment in 2002. In 2005, she was banned from leaving the country.

2.2 On 26 June 2006, the Governor of Ashgabat cancelled the resolution that had permitted the construction of the company's stables and authorized their demolition, without offering alternative land or stables. The author found new stables in the village of Ak-Bugday. On 28 March 2007, she signed a 25-year lease agreement with the Dayhan Association Vatan of the Ak-Bugday etrap, Akhal Velayat, a public body empowered to enter into leases of public land. The lease, which stipulated that no rent would be charged for the first three years, was approved by the Council of said Association. An inspection of the company's book and activities in 2009 by the Tax Inspectorate found no irregularities.

2.3 However, on 10 March 2010, a delegation of 26 officials (all men) from various State organs, including the Ministry of National Security and the Office of the Prosecutor General, came to the stables and told the author, without any substantiation, that she was illegally occupying the building.[2] On the evening of that same day, the author and her spouse were summoned to the Office of the Prosecutor General of Turkmenistan. They were interrogated separately. One prosecutor told her spouse that if he were prepared to divorce her, then he would be allowed to re-register the company exclusively in his own name. He was threatened with imprisonment and rape if he and the author did not comply. The prosecutor also told him, "If you divorce that Jewish woman, we will give you 10 horses. Why did you marry her? Was a Turkmen woman not good enough for you?" He made clear that he believed that a woman, especially a Jewish woman, had no right to run a company or to breed purebred Akhal-Teke horses and said that "the President of the State is very angry about your wife, because she is the director of a company dealing with pure Akhal-Teke horses. It is impossible for the Turkmen people to accept this. It must be stopped".

2.4 During the author's interrogation, two prosecutors threatened her with sexual violence if she did not give up her role. One of them said, "If you don't agree to sign the papers stating that you agreed to give all horses to the State, you will have big troubles". Another said, among other abuse, "You see there are six of us. Each of us will rape you. Your husband is in the other room, and he will also be raped and killed. Your husband is 59 and he won't survive in prison". The prosecutors sought to coerce

[1] In addition, the author's husband was served a travel ban and was told not to approach the horses for the rest of his life and not to talk about them. Furthermore, he was not permitted to work in Turkmenistan.

[2] The author notes that there is no official record of the visit, but that she has a video record of it available.

her into signing a document for the transfer of the ownership of her horses to the authorities. She was instructed to sign the papers by the following morning because the President of the State party had told the Prosecutor General to report to him that the horses were no longer her property. She was also told that a criminal case for illegal land squatting would be commenced against her if she did not comply. The Prosecutor General told her: "This is not our idea. The President does not like it that a Jewish woman who does not speak Turkmen owns one of the best champions of the world. Before 5:30 a.m. you must sign a transfer. After this period, there will be no return."

2.5 The author and her spouse decided to comply and sign the documents. She was warned that filing a complaint would lead to her immediate arrest and the reinstitution of a criminal case against her.[3] That case had been previously withdrawn when she "agreed" to transfer her interest in the horses to the authorities, purportedly after having confessed guilt. The authorities thus took the horses claiming that they were to cover expenses equivalent to $139,398.51 allegedly owed for rent, water and electricity charges and the equivalent of $5,475.23 for the use of the Turkmen State Hippodrome. According to the author, those sums are trivial compared to the market value of the horses, which was many tens of millions of dollars. However, their book value was used instead, resulting in a lower valuation "by many orders of magnitude".[4]

2.6 The prosecutors had also impugned the author's actions in another criminal case, brought in 2010 against I.B., the Chair of the Dayhan Association Vatan when it approved the lease of the farm to the author's company. The indictment of 31 March 2010 alleged that her company had failed to pay for the use of water and electricity at the premises, even though the Turkmen constitution guarantees water and electricity free of charge. Despite the threats, the indictment stated that she and her spouse had freely agreed to give all horses to the authorities. Representatives from the Ministry of Finance and Economy considered that the company was liable to pay rent for the first three years despite the lease agreement saying otherwise and was liable for the equivalent of $770 for water and electricity. The indictment claimed that the losses resulted from the actions of I.B., but that they could be recovered from the company's property.

2.7 The author asserts that the transfer of the horses was involuntary, and that the expropriation was unlawful, in part because of discriminatory attitudes that as a woman (of Jewish background) she should not serve as company director and should not play a leading role in breeding prestigious Akhal-Teke horses. She was thus deprived of her means of existence and significant assets resulting from considerable time and financial investments. She continues to struggle financially. In addition, she, her family and friends were subjected to harassment and threats of reprisals. The authorities subjected the author, her sister E., her daughter and her husband to travel restrictions.[5] Friends who visited them were also monitored, harassed and threatened.[6] Following the lifting of travel restrictions, the author and her family moved to the Russian Federation in 2015 and to Czechia in April 2016, where they were granted refugee status.

[3] A previous criminal case against the author involved allegations that she had violated articles 33 (4) (instigation to commit a crime), 181 (2) (abuse of power) and 317 (spoilage of land) of the Criminal Code of Turkmenistan.

[4] The author refers to an "expert opinion" by her husband, who sets out that the total value of the 87 horses, including the horse depicted on the country's national flag, expropriated from them is $6,771,540,000, plus $75,346,000 for the appropriation of their structures in Ak-Bugday.

[5] The author submitted a copy of a decision restricting her travel.

[6] The author submitted a copy of a declaration by a friend of hers to this effect.

2.8 The author claims that there were no domestic remedies available to her in practice that would have provided effective relief. She argues that the remedies theoretically available for the threats of sexual violence, the travel restrictions and the harassment were illusory given that the expropriations were orchestrated by officials in multiple ministries and were ordered or at least had the support of the President of the State party. The threats of sexual violence and of retaliatory criminal proceedings were made by high level prosecutors, including the Prosecutor General. The author argues that this demonstrates the absence of any prospect in terms of criminal, civil or administrative complaints. She adds that the recognition of her refugee status underscores the ineffectiveness of remedies in Turkmenistan for her.[7] She also refers to the general situation of human rights in Turkmenistan, which, she claims, clarifies that the treatment of her and her family is consistent with systematic human rights violations, the lack of independent courts and impunity for government officials.[8]

Complaint

3.1 The author claims that the unlawful expropriation without compensation of her property based on her sex and ethnicity, the threats of sexual violence against her and the subsequent harassment of her and her family constitute violations of articles 2, 5, 13 and 24 of the Convention, read in conjunction with general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. She argues that her property interests in the company and the horses were a human right and fundamental freedom within the meaning of article 1 of the Convention. The actions of the Turkmen public officials deprived her of her rights and freedoms on the basis of equality of men and women. She argues that the expropriation infringed on her right to property and right to work, which are protected by the Convention. In this regard, the author states that in its case law and concluding observations, the Committee has recognized that the deprivation of an interest in property on a discriminatory basis – in the present case a combination of sex and ethnicity – constitutes a violation of the Convention.[9] The author argues that the actions involved stereotypes based on sex and the traditional roles assigned to women and men, particularly the belief that it is not appropriate for a woman to be the chief executive of a company breeding Akhal-Teke horses. Moreover, the threats of sexual violence against her constituted gender-based violence against a woman. The State officials' action to deprive the author of her property interests was significantly motivated also by the author's non-Turkmen, Jewish background, which

[7] The author refers to Human Rights Committee, *Avadanov v. Azerbaijan* (CCPR/C/100/D/1633/2007), para. 6.4: "The Committee concluded that … it could not be held against the author that he had not raised [his] allegations before the State party authorities or courts for fear that this might result in his victimisation and the victimisation of his family. The Committee also considered relevant in this regard that the author had been successful in obtaining refugee status in a third state. Therefore, the Committee accepted the author's argument that, for him, domestic remedies in Azerbaijan were ineffective and unavailable".

[8] The author refers to a substantial number of reports and jurisprudence that support this conclusion, as well as concluding observations of the Human Rights Committee and the Committee against Torture. See, for example, Compilation on Turkmenistan, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC.WG.6/30/TKM/2); Concluding observations on Turkmenistan of the Committee Against Torture (CAT/C/TKM/CO/1, para. 10 and CAT/C/TKM/CO/2, paras. 22–23); Concluding observations on Turkmenistan of the Human Rights Committee (CCPR/C/TKM/CO/1, para. 13, and CCPR/C/TKM/CO/2, paras. 30–31); and Concluding observations on the eighth to eleventh periodic reports of Turkmenistan of the Committee on the Elimination of Racial Discrimination (CERD/C/TKM/CO/8-11, para. 23).

[9] *Kell v. Canada* (CEDAW/C/51/D/19/2008), paras. 10.2–10.4; and concluding observations on the combined second to fifth periodic reports of Zimbabwe (CEDAW/C/ZWE/CO/2-5), paras. 35–36.

also falls within the scope of the Convention, as intersectional discrimination based on sex and ethnicity.[10] Equally, to the extent that the discriminatory actions against her were motivated in part by discrimination against her husband, on the basis of his political opinion and activities, this would also involve intersectional discrimination on the basis of sex and marital status, as well as ethnicity and religion.

3.2 The author submits that she is the victim of a violation of article 2 of the Convention, particularly under subparagraph (d) and also under subparagraphs (b) and (c). She submits that the expropriation based on the view that it was inappropriate for a woman to own and train Akhal-Teke horses reflects gender stereotypes amounting to a violation of article 5 (a) of the Convention.

3.3 Furthermore, the author argues that article 13 of the Convention extends to the right of women to engage in economic activity, such as running a business. She had significant professional and financial interests in the company as its co-owner and the person responsible for running it. The business was ended by the losses inflicted through expropriations, which is a violation of article 13 of the Convention.

3.4 The author claims that the threats of sexual violence against her, made by State officials, in a situation where she was physically vulnerable and subject to the power of several male officials, constitute a direct violation of her rights under article 2 (c) of the Convention, while the failure to investigate and sanction these threats constitutes a further violation of her rights under article 2 (b)–(d) of the Convention. The prosecutors' warning not to seek a legal remedy constituted a continuation of the discrimination against her, as well as a reprisal and an additional failure to establish legal protection under article 2 (c) of the Convention and the right to be free from discrimination in access to courts and the right to a fair hearing under articles 1 and 15 of the Convention.

3.5 The author requests compensation for moral damages in the amount of $20,000. Further, as restitution of her property is not reasonably available, she requests monetary compensation for the economic losses based on the market value and the loss of profit that reasonably could have been made since the confiscation. Based on a calculation by her husband,[11] she submits that the loss suffered from the value of the horses amounts to $6,771,540,000. Combined with the loss of the money invested in the properties and the use of the horses since 2010, the author submits that the total loss amounts to $7,525,000,000.[12] She also requests the Committee to reiterate its call[13] for a comprehensive policy and to take steps to prohibit and eliminate stereotyping and discrimination based on sex, gender and ethnicity, to raise awareness and to monitor stereotyping.

3.6 The author argues that the passage of time since the violations occurred does not form an obstacle to the admissibility of her case. She notes that the process of the expropriations and harassment and the family's eventual departure from Turkmenistan took a number of years, including because of travel restrictions. Moreover, their social and economic re-establishment in Czechia meant that they could not initially find the expert assistance and time required to prepare properly a communication. Furthermore, it took her and her sister a significant amount of time to access pro bono legal assistance and to arrange the translation of documents in

[10] The author refers to the Committee's observations on discrimination against non-Turkmen women (CEDAW/C/TKM/CO/5, paras. 46–47).

[11] The author submitted a copy.

[12] The author states that she is aware that these valuations may appear extremely high and offers to provide additional information in this regard.

[13] The author refers to the Committee's concluding observations on the fifth periodic report of Turkmenistan (CEDAW/C/TKM/CO/5).

English, Turkmen, Russian and Czech. In addition, neither the Optional Protocol to the Convention nor the Rules of Procedure of Committee pose a legal time limit.[14]

State party's observations on admissibility and the merits

4.1 On 28 December 2021 and 15 June 2022, the State party submitted its observations regarding the author's communication. The State party points out that D.S. applied to the Committee on behalf of Y.S., claiming that her rights under articles 1, 2, 5, 13 and 15 of the Convention had allegedly been violated. Due to the fact that this communication was not the subject of domestic judicial review, verification of the facts stated in the communication is not within the competence of the courts of Turkmenistan.

4.2 The State party describes the factual circumstances surrounding the case concerning the author's spouse, G.K. In this regard, the State party indicates that, by the verdict of the Judicial Collegium for Criminal Cases of the Ashgabat City Court dated 4 April 2002, G.K. was found guilty of committing crimes under articles 181 (1) and (2) and 188 (1) of the Criminal Code of Turkmenistan. The court sentenced him to six years in prison with deprivation of the right to occupy financially responsible positions for a period of three years. The court also decided to recover 4,894,856 manats from G.K. as compensation for damage to the State.

4.3 The court also ruled to transfer money in the amount of $4,000 and 75,000,000 manats from the settlement account of the International Association of Akhal-Teke Horse Breeding to the settlement account of the Akhal-Teke horse breeding plant under the name of S.A. Niyazov; to cancel the arrest imposed on the property of Akhal Yurt, and to return the property according to ownership.

4.4 The State party further informs that, according to the receipt of the wife of G.K., the author Y.S., dated 20 August 2002, the property belonging to Akhal Yurt, as well as according to the receipt order number 64 dated 14 January 2003, the amount of 53,000,000 manats, was fully returned. The State party concludes that the consideration of the arguments set forth in the submission is not within the competence of the courts.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 10 February 2023, the author provided her comments on the observations of the State party. The author recalls that her complaint is related to her discriminatory treatment by State party officials, in particular a series of acts that took place in 2010 and which have had continuing consequences. The author reiterates her claims that the State party has violated her rights under the Convention by: (a) discriminating against her on the basis of gender and ethnicity in her ownership and training of horses, including by effectively expropriating those horses in 2010 without compensation; and (b) discriminating against her on the ground of her sex in the use by State officials of threats of sexual violence against her in order to persuade her to transfer ownership of the horses to the State.

5.2 The author notes that, in its observations, the State party raises no issues in relation to the admissibility of the communication and does not respond to the specific allegations of fact and law contained in the original communication, which formed the basis of the claims of violations of the Convention. The State party response refers to an earlier incident in 2002, not the events that took place in 2010.

[14] The author refers to *MS v. Philippines* (CEDAW/C/58/D/30/2011).

5.3 The author agrees with the description of the 2002 episode as presented by the State party; indeed, the author referred to it briefly in the original communication (see para. 2.1). The author considers, however, that it may be helpful to the Committee to provide further clarification of this earlier episode. The State party's response refers to an episode that took place in 2002 at the time when the author's husband, G.K., was Minister of Horses in Turkmenistan and had fallen out of favour with the ruling authorities. For various reasons, a criminal case was brought forth against the author's husband on charges of large-scale embezzlement, for which the maximum term of imprisonment upon conviction would be 25 years, as well as on lesser charges of negligence and abuse of power. The author's husband was accused of stealing horses and State property, including spoons, knives, forks, cups, flags and electronic scales valued at 53,000,000 manats (approximately $10,000).[15] The horses that he was accused of stealing were confiscated by the State party pending the decision of the court, and the author deposited the sum of 53,000,000 manats with the State before the trial on behalf of her husband, as the Head of the Department of the Central Office of the National Security Committee, A.A., had ordered her to deposit the money pending the court's decision.

5.4 At the trial it was proved that: (a) the horses had not been stolen and that they in fact belonged to the author's husband; and (b) the State property that he had been accused of stealing had not in fact been stolen but was in a warehouse owned by the relevant Ministry. The author's husband was acquitted of the charges of large-scale embezzlement and stealing horses; however, he was convicted of negligence and abuse of power and sentenced to six years of imprisonment on those charges.

5.5 At this time, the sole owner of the horses was the author's husband, who was the head of the individual enterprise/firm Akhal Yurt. Following the conclusion of the criminal proceedings against him, the horses were returned, and they were received by the author, acting as proxy on behalf of her husband, given that he was in prison. The State party also returned the sum of 53,000,000 manats. The response of the State party confirms the return of the property and repayment of the money.

5.6 Following the conclusion of the trial, in 2002, the Akhal Yurt company was dissolved and a new company, the Akhal Yurt Enterprise, was established in the same year. With the establishment of the new firm, the author became co-owner of the horses with her husband.

5.7 These events took place in 2002, some years before the actions complained of in the communication (2006 onwards and, in particular, in 2010 and the following years). However, they do provide relevant background to the discriminatory attitudes and behaviour displayed by the State party's officials towards the author and her family over a sustained period of time.

5.8 The State party's response provides further details about an incident involving the husband of the author that took place in 2002, well before the actions described in the complaint. The State party's observations appear to be based solely on a response from the court which heard the criminal proceedings against the author's husband in 2002 to which it presumably referred some or all of the communication. As noted above, this incident and these proceedings were not directly relevant to the alleged violations in 2010.

[15] The value of this property was at that time about $10,095, calculated on the basis of a rate of 5,250 (old) Turkmen manats to the United States dollar (see www.govinfo.gov/content/pkg/GOVPUB-T63_100-fab63240b6208a926bd391a4d87ad4e2/pdf/GOVPUB-T63_100-fab63240b6208a926bd391a4d87ad4e2.pdf).

5.9 The author states that the State party does not contest any of the specific allegations made by her in relation to the conduct of the State party in 2010, which in the author's submission constituted violations of the Convention by the State party.

5.10 Furthermore, there is no indication that the State party has sought to investigate the allegations contained in the complaint relating to events in 2010. So far as the other allegations are concerned, the State party responded: "Due to the fact that this report [*the communication*] was not the subject of judicial review, verification of the facts stated in the report is not within the competence of the courts of Turkmenistan".

5.11 Under the Optional Protocol to the Convention and under the Convention itself, a State party has an obligation to investigate complaints of violations of the rights set forth in the Convention and to take appropriate steps to provide reparation in cases of violation. In this case it is not sufficient to seek clarification from a court in relation to the details of a case that took place well before the relevant acts; the State party is required to undertake a credible and independent investigation of the allegations made against State officials. That obligation also applies even where no case has been brought before the courts.

5.12 The State party has provided no evidence that it has undertaken such an investigation. In her original communication, the author set out and extensively documented the relevant events of 2010 and subsequently which involved violations of the Convention: these factual allegations were supported by documentary and formally attested affidavit evidence. The State party has contested neither the substance of those allegations nor the legal analysis in the communication arguing that the State party had violated several articles of the Convention.

5.13 The author therefore submits that the factual material which she has submitted has more than sufficiently substantiated the factual claims she has made and that these show clear violations of the Convention. The State party has offered nothing by way of relevant factual material or legal analysis that contests any aspect of the author's case.

5.14 The State party has failed to provide any substantive response to the factual material put before the Committee or to the legal analysis contained in the communication. Accordingly, the author respectfully reiterates the request made in paragraphs 116 and 117 of the original communication.

5.15 The author requests the Committee to find that she has been the victim of a number of violations of the Convention and has suffered moral and material damage as a result. She requests the Committee, in particular: (a) to find that she has been the victim of violations of rights guaranteed to her by the Convention, in particular her right to be free from threats of gender-based violence and harassment and treatment by the authorities based on gendered stereotypes, including the threat of retaliatory criminal proceedings if she challenged the actions of the authorities (articles 1, 2, 5 and 15 of the Convention); (b) to find that her rights to possess and enjoy property without discrimination (articles 1 and 2 of the Convention) have been violated directly and indirectly through the discriminatory actions in depriving her of her property interests in Akhal-Teke horses and the benefit of the investments made in the equestrian centre where they were kept; (c) to find that her rights to engage in work and in economic activities without discrimination (articles 1 and 13 of the Convention) have been violated; and (d) to find that her rights to equality before the law and right to equal access to the courts for the determination of her rights (articles 1, 2 and 15 of the Convention) have been violated.

5.16 The author requests the Committee to declare that the State party is obliged to provide her with reparation for the violations of her rights under the Convention and, in particular: (a) to provide compensation in the amount of $20,000 for the moral injury that she suffered in connection with the threats of sexual violence and

harassment and the threatened institution of retaliatory court proceedings against her; and (b) to provide her with full compensation for the loss of the full commercial value of the horses that the State party confiscated and the resulting loss of profits, and the value of the improvements made to the horse farm, adjusted for inflation and interest since 2010 (a total sum base sum before adjustments of $7,525,000,000).

5.17 The author also requests the Committee to reiterate the call in its concluding observations on the fifth periodic report of the State party for Turkmenistan[16] to adopt a comprehensive policy and take concrete steps to prohibit and eliminate stereotyping and discrimination based on sex, gender and ethnicity, to conduct awareness raising of the harmful effects of stereotyping and to monitor the existence of stereotyping.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that, in essence, the State party has argued that the author's allegations have never been raised in the domestic courts, which renders the communication inadmissible for failure to exhaust all available domestic remedies. The Committee notes the author's claim that domestic remedies in Turkmenistan were ineffective and unavailable to her. The author asserted that the remedies theoretically available (for threats of sexual violence, travel restrictions and harassment) were illusory given that the expropriations were orchestrated by government officials and allegedly were ordered or at least had the support of the President of the State party. The Committee also notes the author's claim that threats of sexual violence and of retaliatory criminal proceedings were made against her by high level prosecutors in the State party, including the Prosecutor General, which demonstrates the absence of any prospect in terms of criminal, civil or administrative complaints.

6.4 The Committee recalls its jurisprudence according to which authors must have raised in substance at the domestic level the claim that they wish to bring before the Committee so as to enable domestic authorities and/or courts to have an opportunity to deal with such a claim.[17] The Committee further recalls that "mere doubts about the effectiveness of the remedies do not absolve authors from exhausting domestic remedies".[18] In the present case, the Committee observes that the author conceded that she has never raised her allegations before the State party authorities, either before or after her and her family's departure from Turkmenistan, and despite the significant lapse of time between the events at stake, the establishment of the author in a third country as a refugee and the submission of the present communications before the Committee. In the light of the foregoing, the Committee considers that the

[16] CEDAW/C/TKM/CO/5.

[17] See inter alia See Zhen Zheng v. Netherlands (CEDAW/C/42/D/15/2007), para. 7.3

[18] See Zhen Zheng v. Netherlands (CEDAW/C/42/D/15/2007), para. 7.3. and J.D. v. Czech Republic (CEDAW/C/73/D/102/2016), para.8.3.

author has not exhausted the available domestic remedies and that the communication is inadmissible under article 4 (1) of the Optional Protocol.

7. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (1) of the Optional Protocol;

(b) The present decision shall be communicated to the State party and to the author.