Examining the Implementation of Treaty Body Views through Selected Examples

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INTRODUCTION

The Republic of Uzbekistan is a party to the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol (OP-ICCPR), allowing individuals who allege that their rights guaranteed under the ICCPR have been violated to petition the Human Rights Committee (HRC or the Committee) for consideration of their complaints.[1] In certain respects, the admissibility criteria and the whole process of petitioning the HRC is not dissimilar from that of other international human rights monitoring mechanisms and tribunals before which individuals may seek remedies for violations of their human rights at the international level, e.g. before the European Court of Human Rights.

To date, the Committee has considered 53 such cases concerning complaints against Uzbekistan. Of these, 47 resulted in the HRC adopting decisions on the merits, while in the remaining six cases the Committee found the complaints to be inadmissible.[2] In most of these cases, the Committee identified violations of the ICCPR and called on Uzbekistan to effectively implement its Views.

However, the effective implementation of the HRC's views remains a challenge and is a topic of discussion among professionals in Uzbekistan and international experts. A significant challenge lies in how to give legal effect to the HRC's views when the domestic court system has already made a determination on the merits of a case. To address this, the paper examines various approaches from different jurisdictions around the world.

In Central Asia as a whole, where domestication of international human rights law is still nascent, courts often struggle to incorporate international human rights treaties and the decisions of Treaty Bodies into their jurisprudence.[3] The judiciary, however, can play a crucial role in this process by interpreting domestic law in light of international human rights treaties.

Without attempting to be exhaustive, this paper provides a legal analysis of States' obligations to implement international treaties by which they are bound and offers a selection of illustrative case studies and examples regarding the implementation of human rights treaties and Treaty Body decisions. In this context, the paper describes certain provisions of the ICCPR and the OP-ICCPR.

While not endorsing any specific solution, this paper aims to provide lawyers, human rights defenders and judicial actors with a set of notions to identify and apply the most effective methods for implementing the Committee's Views in cases arising from Uzbekistan.

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[1] "The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties." See https://www.ohchr.org/en/treaty-bodies

2 OHCHR, Jurisprudence database, https://juris.ohchr.org/AdvancedSearch (Please select 'Uzbekistan' in the box 'Type country's name' and 'CCPR' in 'Select Committee')

[3] *Human Rights Dissemination in Central Asia: Human Rights Education and Capacity Building in the Post-Soviet Space,* Springer Briefs in Political Science, Switzerland,2023, p. 25. See https://link.springer.com/book/10.1007/978-3-031-27972-0 (Accessed 30 Sep 2025).

LEGAL OBLIGATIONS AND REMEDIES UNDER INTERNATIONAL HUMAN RIGHTS TREATIES

Human rights treaties in context of international law as a whole

International human rights treaties are part of a comprehensive body of international law that encompasses diverse subjects, including, among many others, refugee law,[4] international humanitarian law (IHL),[5] international criminal law, international environmental law, diplomatic immunities,[6] international trade and development,[7] transport and communications,[8] aviation,[9] telecommunication,[10] etc. These branches of international law form the international legal framework, including through numerous international treaties and other legal instruments, that are used in various contexts. With respect to this, human rights treaties are no different from other international treaties and are equally legally binding. States Parties to human rights treaties may not invoke domestic legislation as an excuse to fail to perform or give effect to the obligations arising from such treaties.[11] The *Vienna Convention on the Law of Treaties* outlines the general principles governing legal obligations created by treaties, particularly in the following articles:

> Article 26: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.[12]
>
> Article 27: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.[13]

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[4] *E.g.* Convention relating to the Status of Refugees (Refugee Convention), No. 2545, vol. 189 UNTS, p. 137, 1951, https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en

[5] *E.g.* Switzerland. 2025. Geneva Conventions, Federal Department of Foreign Affairs, https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/geneva-conventions.html

[6] *E.g.* Convention on the Privileges and Immunities of the United Nations, No. 4, vol. 1, p. 16 and vol. 90, p.327 UNTS, 1946, https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf

[7] *See, e.g.* UNCTAD, https://unctad.org

[8] *E.g.* Agreement providing for the provisional application of the Draft International Customs Conventions on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, No. 696, vol. 45, p. 149 UNTS, 1949, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-A-1&chapter=11&clang=_en

[9] *E.g.* Convention on International Civil Aviation (Chicago Convention), https://www.icao.int/publications/pages/doc7300.aspx

[10] Convention relating to the distribution of programme-carrying signals transmitted by satellite, No. 17949, vol. 1144 UNTS, p. 3 1974. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXV-1&chapter=25&clang=_en.

[11] United Nations, Vienna Convention on the Law of Treaties, No. 18232, vol. 1155 UNTS p. 332, 1969, , https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf (hereinafter Vienna Convention); HRC, General Comment No. 31, para. 4; Committee on Economic, Social and Cultural Rights (hereinafter CESCR), General Comment No. 9 on the Domestic Application of the Covenant, para. 4.

[12] Article 26 of the Vienna Convention.

[13] Article 27 of the Vienna Convention.

International human rights treaties guarantee effective remedies for human rights violations

Under international human rights law and standards, including under binding human rights instruments such as the ICCPR, States are obligated to ensure that everyone has access to an effective remedy for violations of their human rights.[14] Therefore, the State must establish appropriate administrative and judicial remedies in cases of violations of rights enshrined in international treaties.[15] Judicial remedies are often required, among others, in cases pertaining to the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment and enforced disappearances.[16] Moreover, the right to access to justice and to an effective remedy requires that, ultimately, all rights be justiciable. In those circumstances, judicial remedies will be required to ensure effective redress for any infringements.[17] The Committee on the Rights of the Child, for example, has held that, "in all cases, access to courts or judicial review of administrative remedies and other procedures should be available".[18]

Furthermore, the status of international human rights treaties as legally binding instruments operating directly and immediately within the domestic legal order of States parties should enable individuals to seek enforcement of their human rights before national courts and tribunals.[19]

The International Covenant on Civil and Political Rights

The ICCPR[20] is one of the foundational treaties in international human rights law, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[21] It guarantees a variety of human rights, including the right to life;[22] freedom from discrimination;[23] freedom from torture;[24] freedom from arbitrary arrest and

[14] E.g., Universal Declaration of Human Rights, Article 8; and ICCPR, Article 2.3.
[15] E.g., HRC, General Comment No. 31, para. 15; Committee against Torture, General Comment No. 3 on the Implementation of article 14 by States parties, paras 5, 20, 22; CEDAW, General recommendation No. 28 on the core obligation of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 17.
[16] Bautista v. Colombia, Human Rights Committee No. 563/1993, Views of 27 October 1995, UN Doc. CCPR/C/55/D/563/1993, para. 10.
[17] CESCR, General Comment No. 9: The domestic application of the Covenant, E/C.12/1998/24, (1998), para. 9.
[18] Committee on the Rights of the Child (CRC), General Comment No. 16, State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16 (2013), para. 71. See, also, e.g., CESCR, General Comment No. 9, para. 9.
[19] See, e.g., CESCR, General Comment No. 9 para. 4.
[20] Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), 16December 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[21] UNHCHR, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, June 1996, https://web.archive.org/web/20080313093428/http://www.unhchr.ch/html/menu6/2/fs2.htm (clarifying that these three instruments together, the UDHR, ICCPR and ICESCR, form the International Bill of Human Rights).
[22] ICCPR art. 6.
[23] ICCPR art. 2(1).
[24] ICCPR art. 7.

detention,[25] including by guaranteeing the right to *habeas corpus*;[26] the right to a fair trial;[27] the right to equality before the law;[28] freedom from forced labour and slavery;[29] freedom of movement;[30] the right to privacy;[31] freedom of thought, conscience and religion;[32] freedom of expression;[33] freedom of association with others;[34] and the right to political participation.[35]

The ICCPR also guarantees to individuals who claim a violation of their Covenant rights be granted access to an effective legal remedy for such violation. ICCPR Article 2(3)[36] states that each State Party undertakes:

> "(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted."

As a treaty, the ICCPR is legally binding on States Parties.[37] The ICCPR (similar to some other human rights treaties) establishes a special Committee to oversee and monitor implementation of the ICCPR.[38] The HRC is an 18-member independent expert human rights "treaty body"[39] established by the treaty itself.[40] The Committee considers periodic State reports on implementation of the ICCPR and issues Concluding Observations, considers individual complaints

[25] ICCPR art. 9.
[26] ICCPR art. 9(4) ("Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.").
[27] ICCPR art. 14.
[28] ICCPR art. 14, 26.
[29] ICCPR art. 8.
[30] ICCPR art. 12.
[31] ICCPR art. 17.
[32] ICCPR art. 18.
[33] ICCPR art. 19.
[34] ICCPR art. 22.
[35] ICCPR art. 25.
[36] ICCPR art. 2(3).
[37] For the relevant language in the ICCPR, see, for example, ICCPR art. 51 ("States Parties [are] bound by the provisions of the present Covenant and any earlier amendment which they have accepted.").
[38] ICCPR art. 28-45.
[39] Supra note 1.
[40] ICCPR art. 28.

under the OP-ICCPR, issues General Comments[41] and annual reports about its work.[42] In addition, the Committee follows up on its decisions through a procedure designed to monitor whether States are implementing the Committee's Views.

The HRC has clarified the obligations created by the ICCPR in its General Comment 31:

> "A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction ...[43]
>
> The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial) ... are in a position to engage the responsibility of the State Party."[44]

The First Optional Protocol to the ICCPR

Uzbekistan has also acceded to the First Optional Protocol (OP) to the Covenant (OP-ICCPR).[45] The OP-ICCPR is a treaty in its own right, open to ratification or accession by parties to the main treaty,[46] the ICCPR.[47] While most international human rights treaties include individual complaints procedures under their Optional Protocols (or a procedure for the State's acceptance of individual communications is enshrined in the treaty itself), Uzbekistan has accepted the individual complaints procedure only under the ICCPR.[48] The following section therefore focuses on the OP-ICCPR and the role of HRC in this respect.

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[41] A General Comment is a Treaty Body's interpretation of that treaty's provisions and themes, sometimes seeks to clarify the duties of states in regard to those provisions or suggest approaches to implementing those provisions. While General Comments are not legally binding, they are at minimum considered authoritative statements on the interpretation of the treaty, as they are formulated by the very body that monitors that treaty. *See* OHCHR, *General Comments*, United Nations, https://www.ohchr.org/en/treaty-bodies/general-comments, International Service for Human Rights, *General Comments - What do the Treaty Bodies do?*, ISHRAcademy, https://academy.ishr.ch/learn/treaty-bodies/general-comments---what-do-the-treaty-bodies-do (Accessed 2 September 2025); *see also* CCPR, General Comment No. 33: Obligations of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 94th Sess., published Jun. 25, 2009, UN Doc CCPR/C/GC/33, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/432/66/PDF/G0943266.pdf?OpenElement ("The views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument.").[hereinafter CCPR GC 33]

[42] OHCHR, Introduction to the Committee, United Nations, https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee.

[43] CCPR GC 31, para. 3.

[44] CCPR GC 31, para. 4.

[45] OHCHR, Ratification Status of Uzbekistan, UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN (Accessed 2 September 2025).

[46] United Nations Treaty Collection, Glossary of terms relating to Treaty actions, United Nations, https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#accession ("Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification.").

[47] *See, e.g.*, CEDAW, *What is an Optional Protocol?*, UN WOMEN, https://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm.

[48] *See* OHCHR, Ratification Status of Uzbekistan, UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN (Accessed September 2025).

The Role of the Committee under the Optional Protocol

The OP-ICCPR provides that individuals who have exhausted domestic remedies may submit a complaint (communication) to the HRC about violations of any of their rights guaranteed under the Covenant,[49] and that:

> "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant".[50]

In practice, this means that, as with other international human rights monitoring mechanisms and tribunals before which people may seek remedies for violations of their human rights at the international level (e.g. before the European Court of Human Rights), individuals may apply to the Committee for it to reach and issue an "authoritative determination"[51] on their case if they consider their rights guaranteed under the ICCPR have been violated. The Committee can then assess the complaint and issue its decision or "View" on the case.[52]

Text of Treaty Bodies' "Views"

The Committee's Views generally resemble a judicial decision.[53] As the Committee itself has said:

> "11. [T]he Views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions."
>
> 12. The term used in article 5, paragraph 4, of the Optional Protocol to describe the decisions of the Committee is "Views". These decisions state the Committee's findings on the violations alleged by the author of a communication and, where a violation has been found, state a remedy for that violation".[54]

Before considering the merits of any complaint submitted to it, the Committee considers whether the communication is admissible under the OP-ICCPR. Under the Protocol, the criteria for the Committee to deem a communication admissible are as follows:

1) as required under article 5(2)(a) of the OP-ICCPR, the same matter is not being examined under another procedure of international investigation or settlement;
2) as required under article 5(2)(b) of the OP-ICCPR, the individual has exhausted all available domestic remedies. The same provision clarifies that this requirement is waved when the

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[49] First Optional Protocol to the International Covenant on Civil and Political Rights, art. 2, (1966), https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political [hereinafter Optional Protocol to the ICCPR].
[50] Optional Protocol to the ICCPR art. 1.
[51] CCPR GC 33, para. 13.
[52] Optional Protocol to the ICCPR art. 5.
[53] CCPR GC 33, para. 13.
[54] CCPR GC 33, para 11-12.

application of domestic remedies is unreasonably prolonged. The Committee has also waved this requirement in respect of domestic remedies that are unlikely to provide effective relief;

3) as required under article 1 of the OP-ICCPR, the Committee will only consider a communication in respect of a State Party to the Covenant that is also a Party to the Protocol;
4) as required under article 1 of the OP-ICCPR, the Committee will only consider communications from individuals who are subject to the jurisdiction of a State Party to the Covenant "who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant";
5) as required under article 1 and 2 of the OP-ICCPR, the communication must concern alleged violation of "any of the rights set forth in the Covenant"; and
6) as required by article 2 of the OP-ICCPR, the communication must be sufficiently substantiate for the purposes of admissibility.[55]

When the Committee considers the merits of a communication and determines that there has been a violation of one or more rights under the Covenant, the Committee generally concludes with some version of the following:

1. The State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to provide the author with adequate compensation …
2. The State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant . . . the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.[56]

Note that under this formulation, the Committee's Views generally leave the question of what precisely constitutes "adequate compensation" to the State Party concerned.[57] This leaves room for a domestic court or other authority to conduct a review of the case and determine the extent, the form, and the procedure for payment of compensation under domestic law.[58]

Treaty Bodies' decisions and in the domestic legal order

As mentioned earlier, an international treaty is legally binding on the States that are parties to it.[59] When a State becomes a party to an international treaty, either through signature followed by

[55] *See, e.g.*, CCPR, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2574/2015, UN Doc. CCPR/C/131/D/2574/2015, (2021), https://undocs.org/CCPR/C/131/D/2574/2015
[56] Ibid.
[57] Kate Fox Principi, "United Nations Individual Complaint Procedures - How Do States Comply?", in *Human Rights Law Journal*, Volume 11, 2017. [hereinafter Fox Principi, How Do States Comply]
[58] *E.g*. André Nollkaemper and Rosanne van Alebeek, The legal status of decisions by human rights treaty bodies in national law, in Amsterdam Center for International Law, 2012. https://www.researchgate.net/publication/228218708_The_Legal_Status_of_Decisions_by_Human_Rights_Treaty_Bodies_in_National_Law
[59]Vienna Convention art. 26-27.

ratification or directly through accession to it, it assumes binding obligations that must be fully implemented in good faith, as mandated by the principle of *pacta sunt servanda*.[60] This principle, central to international law, asserts that treaties in force are legally binding and therefore the parties concerned must comply with their provisions in full. States have a duty to ensure that they comply effectively with the provisions of the treaty. Failure to do so constitutes a breach of international law, making the State liable for its failure to fulfil its treaty obligations. The discretion a State possesses in choosing how to implement its obligations in good faith, does not absolve it from ensuring that the treaty's terms be fully respected and enforced.

By joining the OP-ICCPR, a State Party:

> "… recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."[61]

As the Committee pointed out in its General Comment 33 on the Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights:[62]

> "13. The views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument. These views derive their character, and the importance which attaches to them, from the integral role of the Committee under both the Covenant and the Optional Protocol.
>
> 15. The character of the views of the Committee is further determined by the obligation of States parties to act in good faith, both in their participation in the procedures under the Optional Protocol and in relation to the Covenant itself. A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations.
>
> In any case, States parties must use whatever means lie within their power in order to give effect to the views issued by the Committee."[63][64]

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[60] Vienna Convention art. 26.
[61] Optional Protocol to the ICCPR art. 1.
[62] CCPR GC 33, para 13 and 15.
[63] CCPR GC 33, para 15.
[64] Human Rights scholars Van Alebeek and Nollkaemper,have concluded that States "violate their obligations under individual complaints procedures when they do not ensure that their national courts can pay heed to the outcome of these procedures in possible subsequent domestic proceedings". They find merit in the argument that, once a State accepts a Committee's competence to determine whether a breach of the treaty has occurred (for instance by becoming parties to the OP-ICCPR), it would be incongruous for the State to thereafter feel free to ignore the Committee's findings and conclusions. They thus hold that "an obligation to give the contents of Views serious consideration is implied in the structure of the provisions on the competence of treaty bodies." In their view, the expertise of the Treaty Body can create "a presumption in favour of substantive correctness" of their Views and, if a State disagrees with the View expressed in a certain case, "it must present good arguments in counter-argument". "Blanket refusals to implement particular Views, without considering them or attaching any weight to them, sit uneasily with the obligations flowing from or implied by the relevant conventions and protocols". "[S]tates must enable their organs, including their courts, to consider the consequences of decisions of Treaty Bodies in their determination of the position of a successful author under national law." Supra note 59, p. 391.

In this connection, international human rights law experts, including the ICJ, have concluded that a State is responsible for any failure by any organ of the State, including the judiciary, to comply with the State's obligations under international law.[65] With respect to the ICCPR, as with other treaties, in order to comply with the State's obligations under the Covenant, State organs, including national courts, must use whatever means lie within their power to give effect to a decision issued by the Committee.[66] A refusal to consider or give due weight to relevant Committee findings when adjudicating remedies as provided for by the Convention would violate the State's obligations under the Convention.[67]

In other words, the international legal obligations of the State are binding on all organs of the State, including the judiciary.[68] A treaty body decision, generally speaking, does not automatically have the weight of domestic law, yet neither may a State ignore or contradict those Views - and is obliged by its legal obligations under that treaty to respect the Views in good faith. [69]

Thus, the Views of the Committee must be implemented by the State in good faith.

In conclusion, while the precise manner in which States implement the Human Rights Committee's Views may vary depending on their domestic legal structures, the overarching principle remains that States are obligated to take these Views seriously and act in good faith. Therefore, States must create effective legal frameworks that allow for the integration of treaty obligations into domestic law, ensuring that international human rights treaties are respected and enforced. This is essential to meet international obligations and to strengthen the protection of human rights within and through national legal systems.

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[65] ICJ, "Expert opinion of the Intentional Commission of Jurists on the use of decisions of the UN Committee Against Torture in proceedings before domestic courts" (2015), https://icj2.wpenginepowered.com/wp-content/uploads/2015/02/Russia-Evloev-expert-opinion-Advocacy-analysis-brief-2015-eng.pdf; *see also* International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Article 4.1.

[66] ICJ, *Expert opinion of the Intentional Commission of Jurists on the use of decisions of the UN Committee Against Torture in proceedings before domestic courts*, 2015, https://icj2.wpenginepowered.com/wp-content/uploads/2015/02/Russia-Evloev-expert-opinion-Advocacy-analysis-brief-2015-eng.pdf.

[67] Ibid.

[68] Ibid.

[69] "How Do States Comply", in *Fox Principi*, para 14.

APPROACHES TO EFFECTIVE IMPLEMENTATION OF THE HUMAN RIGHTS COMMITTEE'S VIEWS

As mentioned above, the obligations created by the ICCPR and OP-ICCPR, and expressed by the HRC in its Views, require States parties to implement them in good faith. However, the manner in which States go about implementing these Views may vary.

The Human Rights Committee has suggested some possible approaches on the part of the judiciary. For example, in its General Comment 31,

> "15. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law".[70]

The ICJ has collected examples of how various States have implemented Treaty Bodies' Views. These examples, while not always arising in connection with the implementation of HRC's Views specifically, represent an attempt to describe a variety of approaches to implementing international human rights Treaty Bodies' decisions. The ICJ considers that some of those approaches appear to be particularly persuasive.

Treating the Committee's Views as binding on the merits

One approach to implementation of the Committee's Views is to treat them as a binding decision on the merits of the case, which should then be effectively enforced domestically. This would likely require that: a) the ICCPR be incorporated into national law or recognized as a direct source of law,[71] and b) the Treaty Body recognized as having jurisdiction or authority over cases by virtue of the Optional Protocol.

States have adopted various methods to achieve this integration. One of the earliest and most structured examples comes from Colombia, where legislation was specifically enacted to ensure compliance with international human rights decisions.

Case study: Colombia

> Colombia Law No. 288 (July 5, 1996)[72]

In 1996, the Congress approved Law 288, which established a procedure for the payment of pecuniary damages in adverse decisions by either the HRC or the Inter-American Commission. The law sets up a national committee—composed of representatives from the ministries of the interior, foreign affairs, justice and defence—that must pursue a judgment until it can "pronounce a favourable opinion on the fulfillment" of a decision. The law outlines the process by which the

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[70] CCPR GC 31, para. 15.
[71] Supra note 69 (giving the example of Finland making the Covenant directly applicable).
[72] Colombia Law No. 288/96, Regulate the Procedure for the Indemnity of Victims of Human Rights Violations (July 5, 1996) ("Colombia Implementation Law").

national committee would consider whether to implement the recommendations of the international body and stipulates that it must do so within 45 days from the official notice of judgment; it also regulates how indemnification, if approved, should be implemented.[73]

Colombia's legislation illustrates how a national legal framework can effectively translate the Committee's Views into enforceable decisions domestically, ensuring that international obligations are upheld within the domestic legal system. Such an approach emphasizes the importance of having clear legislative mechanisms domestically to support the implementation of international decisions at the national level.

Case study: The Netherlands

> *Timmer v.The Netherlands*, Communication No. 2097/2011
>
> Timmer, a citizen of The Netherlands who complained that The Netherlands failed to allow him a meaningful appeal of his criminal conviction and sentence, in violation of ICCPR Article 14, paragraph 5.[74] He was arrested, charged, and convicted of assaulting a police officer and not complying with an order to identify himself. He was convicted in court, while not represented by a lawyer, in a brief trial in Police Court. The court gave an oral judgment, with no reasoning provided. When Timmer tried to appeal his conviction and sentence of fines, the Court of Appeal declined to consider his case. He argued that he was entitled to a genuine review of his case by a higher tribunal under the ICCPR. The Netherlands accepted the Committee's Views that a violation of ICCPR article 14, paragraph 5 had occurred, reimbursed him for the fine he paid and struck the offence from the author's criminal record.[75]

In cases like *Timmer v. Netherlands*, expunging the criminal record provides a legal remedy, effectively addressing the violation in accordance with the Committee's Views, without the need for further judicial reconsideration of the case.

Incorporation of international treaties as a direct source of domestic law

Legislative incorporation of the ICCPR into national law provides the most direct way of recognizing and enforcing the Committee's Views within the domestic legal order.[76] For example, Ukraine's implementation law for European Court of Human Rights judgments makes those decisions legally

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[73] Ibid.
[74] ICCPR art. 14 para. 5 ("Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.").
[75] *Timmer v. Netherlands,* Human Rights Committee Communication No. 2097/2011, Views of 24 July 2014, UN Doc. CCPR/C/111/D/2097/2011; *see* Human Rights Committee, Follow-up progress report on individual communications, CCPR/C/118/3,(2017), p. 32 https://undocs.org/en/CCPR/C/118/3.
[76] *Supra note 69.* Fox explains that States have an obligation to allow the Views to take "legal effect," which at least requires "serious consideration." What that means is contested. Failing to respond at all, or merely contesting the decision without providing new reasoning, is clearly insufficient. Fox noted that, the HRC had never explicitly indicated that a State had provided good reasons for failing to implement its Views.

binding, and Ukrainian judges must consider those judgments.[77] Kyrgyzstan takes a similar approach, incorporating treaty law as a direct source of law.[78]

Case study: Kyrgyzstan

By incorporating international treaty obligations directly into its national law through its Constitution and legislative acts, Kyrgyzstan ensures that these commitments are recognized in law as having immediate legal force. This approach creates a domestic legal framework where international treaty obligations are not only recognized but may also be effective enforced. It also empowers domestic courts to directly invoke international treaties when adjudicating cases. This strategy reflects Kyrgyzstan's proactive stance in engaging with international mechanisms as practical tools to strengthen human rights protections within its jurisdiction.

> The Kyrgyz Constitution, article 12 states:
>
> International treaties and agreements to which the Kyrgyz Republic is a party and other universally accepted principles and norms of international law in force as prescribed by law shall be a constituent and directly effective part of the legislation of the Kyrgyz Republic.[79]

Below we reproduce some excerpts of Kyrgyz's domestic law.

> Law of the Kyrgyz Republic on International Treaties of the Kyrgyz Republic
>
> "Article 31. Compliance with international treaties of the Kyrgyz Republic
>
> 1. International treaties of the Kyrgyz Republic are subject to strict observance by the Kyrgyz Republic in accordance with the norms of international law and regulatory legal acts of the Kyrgyz Republic.
>
> Article 32. Fulfilment of obligations under international treaties of the Kyrgyz Republic
>
> 1. An international treaty is subject to mandatory execution by the Kyrgyz Republic from the moment it enters into force for the Kyrgyz Republic.
>
> 2. The Government develops and implements measures for the implementation of international treaties of the Kyrgyz Republic and determines the ministries, State committees, administrative departments and officials who are responsible for the fulfilment of obligations under international treaties of the Kyrgyz Republic.

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[77] *In x ALA,* Constitutional Court of Ukraine, N 2-51/2011, 13 October 2011.http://zakon2.rada.gov.ua/laws/show/v049u710-11. Citing *Nikolay Kucherenko v. Ukraine,* ECtHR, App. No. 16447/04, 19 February 2009. Yuri Lutsenko, Ukraine's former minister of internal affairs, who has been detained on charges of abuse of office since December 2010, brought the appeal. In February 2012 Lutsenko—who insists his prosecution has been politically motivated— was sentenced to four years in jail (with confiscation of his property) for embezzlement and abuse of office, although the European Court ruled that his arrest and provisional imprisonment violated the convention. See ECtHR, App. No. 6492/11, *Lutsenko v. Ukraine,* ECtHR, App. No. 6492/11, 3July 2012. Interview with Oksana Klymovych, Kyiv National University, 31 July 2012.

[78] Constitution of the Kyrgyz Republic art. 12.

[79] Constitution of the Kyrgyz Republic art. 12.

> 3. At the suggestion of the Government, responsibility for the fulfilment of obligations under international treaties of the Kyrgyz Republic shall be assigned to other relevant State bodies of the Kyrgyz Republic, whose competence includes issues regulated by such international treaties.
>
> 4. Ministries, State committees and administrative departments, other relevant State bodies of the Kyrgyz Republic, whose competence includes issues regulated by international treaties of the Kyrgyz Republic, ensure the fulfilment of obligations assumed under such international treaties by the Kyrgyz Republic, exercise the rights belonging to the Kyrgyz Republic arising from these international treaties, and also monitor the observance and fulfilment by other parties of these international treaties of their obligations.
>
> 5. The Government exercises control over the fulfilment of obligations under international treaties of the Kyrgyz Republic.
>
> Article 33
>
> Interpretation of international treaties concluded by the Kyrgyz Republic is carried out in accordance with the norms of international law."[80]

Thus, the Constitution explicitly recognizes international treaties as an integral part of the national legal system, granting them the same authority as domestic law. Furthermore, the Law on International Treaties require that these obligations be strictly observed, with specific duties assigned to various State bodies to implement and monitor compliance. This legal structure empowers the judiciary to apply international treaties directly, ensuring that courts can rely on human rights instruments in domestic legal proceedings.

Case study: Norway

Norway's legal framework exemplifies how international human rights obligations may be effectively woven into the fabric of domestic law. The country incorporated the ICCPR and its two Optional Protocols into the Norwegian Human Rights Act as of 1999.[81] This approach reinforces the role of international human rights instruments in shaping and guiding national legal proceedings.

> Norway, The Human Rights Act
>
> Section 2
>
> "The following conventions shall have the force of Norwegian law insofar as they are binding for Norway:

[80] Law On International Treaties of the Kyrgyz Republic, art. 31-33, http://cbd.minjust.gov.kg/act/view/ru-ru/205286

[81] Norway, Act No. 30 of 1999, Act Relating to the Strengthening of the Status of Human Rights in Norwegian Law. https://lovdata.no/dokument/NLE/lov/1999-05-21-30

1. The Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol no. 11 of 11 May 1994 to the Convention, together with the following protocols:

a) Protocol of 20 March 1952,
b) Protocol no. 4 of 16 September 1963 on the protection of certain rights and freedoms other than those already included in the Convention and in the First Protocol to the Convention,
c) Protocol no. 6 of 28 April 1983 on the abolition of the death penalty,
d) Protocol no. 7 of 22 November 1984,

2. The International Covenant of 16 December 1966 on Economic, Social and Cultural Rights,

3. The International Covenant of 16 December 1966 on Civil and Political Rights, together with the following protocols:

a) Optional Protocol of 16 December 1966,
b) Second Optional Protocol of 15 December 1989 on the abolition of the death penalty."

Section 3
"The provisions of the conventions and protocols mentioned in section 2 shall take precedence over any other legislative provisions that conflict with them."

Norway, The Dispute Act[82]

"Section 31-3 Reopening on grounds of procedural error

(1) A request to reopen a case may be made:

d) if in a complaint against Norway in respect of the same subject matter it is determined that the procedure has violated a treaty which, pursuant to the Human Rights Act, is incorporated into Norwegian law."

Norway, Criminal Procedure Act[83]

"Section 391. In favour of the person charged, reopening of a case may be required:

2) when an international court or UN human rights committee has in a case against Norway found that
a) the decision conflicts with a rule of international law that is binding on Norway, and it must be assumed that a new hearing should lead to a different decision, or
b) the procedure on which the decision is based conflicts with a rule of international law that is binding on Norway if there is reason to assume that the procedural error may have influenced the substance of the decision, and that a reopening of the case is necessary in order to remedy the harm that the error has caused."

[82]Norway, Act relating to mediation and procedure in civil disputes (The Dispute Act), LOV-2005-06-17-90, 1 January 2008. https://lovdata.no/dokument/NLE/lov/2005-06-17-90/*
[83] Norway, The Criminal Procedure Act, No. 25, 22 May 1981. https://legislationline.org/sites/default/files/documents/30/Norway_Criminal_Procedure_Act_1981_am2013_en.pdf

Norway's approach to integrating international treaties into its domestic legal system is marked by a structured and detailed legal framework. By incorporating the ICCPR and its Optional Protocols into the Norwegian Human Rights Act as of 1999, Norway ensures that its international legal obligations are directly enforceable within its domestic legal system. This incorporation is further reinforced by specific provisions in the civil and criminal procedure acts. For example, in *Aboushanif v. Norway* (Communication No. 1542/2007),[84] the HRC found that the author was denied the right to have his criminal conviction and sentence in relation to tax offences reviewed by a higher tribunal. Norway paid NOK 200,000 compensation.

Using the Human Rights Treaties and the Views as an interpretive tool of constitutional law

One way to implement a Committee's View is to use the ICCPR – or another international human rights treaty as appropriate in the case at hand –as an interpretive tool of relevant provisions of domestic law.[85] For example, since the Uzbekistan Constitution contains many rights that overlap with similarly worded provisions of the ICCPR,[86] such an approach may be particularly interesting even outside the context of implementing particular Views. Canada provides a valuable example in the famous *Keegstra* case, regarding freedom of expression and hate speech.

Case study: Canada

> *R. v. Keegstra* (Supreme Court of Canada, 1990)[87]
> Mr James Keegstra was a high school teacher who was charged with wilful promotion of hatred against identifiable groups. His teachings attributed various characteristics to Jewish people, describing them, among others, as "secretive" and "inherently evil". He appealed his conviction on freedom of expression grounds. However, the Supreme court of Canada dismissed his appeal, with majority[88] concluding that any infringement or derogation of his right to free expression was justified as a reasonable restriction because of the substantial harm that can flow from hate propaganda. The court was clearly concerned that the kind of hate propaganda in this case, while not itself violent, leads to violence, and eventually to genocide if allowed to run unchecked. Thus, such restrictions may be necessary in a "free and democratic society."
>
> While the court was not directly asking or answering whether criminal sanctions for Mr Keegstra violated Canada's international obligations, the court did address international human rights instruments to frame the discussion:

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[84] *Abdeel Keerem Hassan Aboushanif v Norway*, Human Rights Committee Communication No. 1542/2007, Views of 17 July 2008, UN Doc. CCPR/C/93/D/1542/2007. https://www.worldcourts.com/hrc/eng/decisions/2008.07.17_Aboushanif_v_Norway.htm
[85] CCPR GC 31, para 15.
[86] Compare **Constitution of the Republic of Uzbekistan** art. 24 with ICCPR art. 6.
[87] *R. v. Keegstra,* Supreme Court of Canada, No. 21118, Judgment of 13 December 1990, [1190] 3 S.C.R.
[88] In the dissenting opinion, Justice McLachlin agreed with the majority judgment that freedom of expression had been infringed, however, she argued that the limitation to freedom of expression was justifiable and reasonable and rejected the notion that criminal prosecutions can reduce racism and hate propaganda. See *R. v. Keegstra,* Supreme Court of Canada, No. 21118, judgment of 13 December 1990, [1190] 3 S.C.R., Justice McLachlin, dissenting.

> "[t]he international community has collectively acted to condemn hate propaganda, and to oblige State Parties to CERD [Convention on the Elimination of All Forms of Racial Discrimination] and ICCPR to prohibit such expression, thus emphasizes the importance of the objective behind [the Canadian offence of promotion to hatred] and the principles of equality and the inherent dignity of all persons that infuse both international human rights and the Charter."

In this case, the court treated the international agreements as persuasive, though not necessarily binding authority. This was a domestic case with no pertinent Treaty Body decision. However, the Supreme Court used international treaties to interpret domestic law. Thus, even though not applying the treaties directly, the court effectively used the treaties as interpretive instruments.

Writ of Amparo

Latin American countries also utilize "Amparo actions" as powerful judicial remedies designed to protect and enforce human rights recognized both in national constitutions and international human rights treaties. This mechanism enables individuals to seek judicial remedies when their human rights, guaranteed by domestic law and international obligations, are violated. Notably, amparo actions provide an effective procedure for the judicial implementation of Views issued by international treaty bodies, thereby reinforcing the binding nature of international human rights law within domestic jurisdictions. Several Latin American countries—including Mexico, Costa Rica, Peru, Colombia and Ecuador — explicitly recognize the constitutional relevance and enforceability of international human rights treaties through amparo procedures and court decisions.

Case study: Mexico

> Mexico, the Constitution (rev. 2015)[89]
>
> "Article 1: [a]ll individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State…"
>
> Mexico, Ley de Amparo (2013, as amended to 13 Mar 2025)[90]
>
> "Article 1: The purpose of the amparo trial is to resolve any dispute… that violates human rights recognized… by the Constitution… and in international treaties…"
>
> Mexico, Amparo en Revisión *406/2023*
>
> The Mexican Supreme Court invoked Article 15 of ICCPR and Article 9 of the American Convention on Human Rights as interpretative guides for due process and procedural guarantees in criminal law. By referencing these treaty provisions, the Court reinforced that constitutional protections in Mexican amparo jurisprudence must be consistent with Mexico's international human rights obligations and that, where domestic constitutional standards intersect with treaty norms, the more protective standard should prevail.

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[89] Congress of the Union, Political Constitution of the United Mexican States, 5 February 1917, https://www.constituteproject.org/constitution/Mexico_2015

[90] Congress of the Union,Amparo Law, Regulatory of Articles 103 and 107 of the Political Constitution of the United Mexican States, 2 April 2013. https://www.gob.mx/cms/uploads/attachment/file/131561/9._LEY_DE_AMPARO__REGLAMENTARIA_DE_LOS_ARTS._103_Y_107_DE_LA_CPEUM.pdf

Case study: Costa Rica

Costa Rica, the Constitution[91]

"Article 48: the recurso de amparo maintains or restores enjoyment of rights in the Constitution and of a fundamental character established in international human rights instruments applicable in Costa Rica."

Case study: Peru

Peru Tribunal Constitutional judgment STC 01926-2007-AA[92]

"[T]he rights protected by the Amparo action must be interpreted in accordance with the Universal Declaration of Human Rights, international human rights treaties ratified by Peru, and the jurisprudence of international human rights courts whose jurisdiction Peru has accepted, thereby ensuring the protection and enforcement of fundamental rights within the national legal system." *(Original excerpt translated into English)*

Peru Tribunal Constitutional judgment STC 00026-2005-PI/TC[93]

"[I]nternational human rights treaties ratified by the Peruvian State have constitutional rank and therefore form part of the constitutional review parameter used by the Constitutional Tribunal in the review of norms." *(Original excerpt translated into English)*

Case study: Colombia

Colombian Constitutional Court Judgment T-1319/01[94]

"[A]rticle 93 of the Constitution incorporates into the constitutional framework international human rights treaties ratified by Colombia, provided they relate to rights already enshrined in the Constitution. This incorporation ensures that these treaties form part of the 'block of constitutionality' and must be interpreted in harmony with the Constitution."

Case study: Ecuador

Ecuador, Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional[95]

"Article 1: The purpose of this Law is to guarantee the effectiveness of the rights recognized in the Constitution and in the international human rights instruments ratified by the Ecuadorian State. *(Original excerpt translated into English)*

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[91] National Assembly of Costa Rica, Political Constitution of the Republic of Costa Rica, 7 November 1949. https://conamaj.poder-judicial.go.cr/images/pdf/026.pdf

[92] Tribunal Constitucional del Perú. STC 01926-2007-PA/TC, judgment of 6 October 2008. https://www.tc.gob.pe/jurisprudencia/2008/01926-2007-AA.pdf

[93] Tribunal Constitucional del Perú. STC 03326-2017-PA/TC, judgment of June 2023. Constitutional recognition of the constitutional rank of human rights treaties and their role in constitutional review.https://tc.gob.pe/jurisprudencia/2023/03326-2017-AA.pdf

[94] Corte Constitucional de Colombia, Sentencia T-1319/01, 7 December 2001. https://www.corteconstitucional.gov.co/relatoria/2001/T-1319-01.htm

[95] Organización de los Estados Americanos (OEA), Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, Oficio No. SAN-2009-077, 21 September 2009. https://www.oas.org/juridico/PDFs/mesicic4_ecu_org2.pdf

> Article 39: The action of protection shall have as its purpose the direct and effective protection of rights recognized in the Constitution and in international human rights treaties. *(Original excerpt translated into English)"*

Amparo and related actions across these Latin American jurisdictions function as essential legal tools enabling the domestic enforcement of human rights norms contained in constitutions and international treaties. This integration ensures that States uphold their international human rights obligations and provides effective remedies to victims of rights violations.

Requiring administrative bodies to consider international obligations

Sometimes, cases arise in which applicants appeal the initial decision of an administrative body. This may happen in the context of consideration of an issue under the jurisdiction of an administrative authority, e.g. an asylum case.[96]

Case study: Canada

> *Baker v Canada (Minister of Citizenship and Immigration)*, 2 SCR 817 (1999)
>
> Mavis Baker was a Jamaican woman who lived without status in Canada for 11 years as a domestic worker. During this time, she gave birth to four children in Canada. When the government discovered that she was in Canada without an official status, it ordered her deportation. She brought an application for permanent residence under Canadian domestic law, which was rejected without providing a reason. Baker appealed the decision and the Federal Court and Federal Court of Appeal each dismissed her appeal. However, the Supreme Court of Canada reversed the decision, holding that procedural fairness required the decision-maker to consider the human rights of Baker's children, guaranteed by the Convention on the Rights of the Child (to which Canada is a party).
>
> The Court said:
>
> "[A]nother indicator of the importance of considering the interests of children when making a compassionate and humanitarian decision is the ratification by Canada of the Convention on the Rights of the Child, and the recognition of the importance of children's rights and the best interests of children in other international instruments ratified by Canada. International treaties and conventions are not part of Canadian law unless they have been implemented by statute. I agree with the respondent and the Court of Appeal that the Convention has not been implemented by Parliament. Its provisions therefore have no direct application within Canadian law.
>
> Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. The legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation

[96] *Baker v Canada (Minister of Citizenship and Immigration)*, Supreme Court of Canada, judgment of 9 July 1999, No. [1999] 2 SCR 817 [Hereinafter Baker v Canada]; *Minister for Immigration and Ethnic Affairs v. Teoh*, Australian High Court, judgment of 7 April 1995, (1994) 128 A.L.R. 353.

> is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.
>
> The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries. It is also a critical influence on the interpretation of the scope of the rights included in the Charter. The values and principles of the Convention recognize the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future. In addition, the preamble, recalling the Universal Declaration of Human Rights, recognizes that "childhood is entitled to special care and assistance". A similar emphasis on the importance of placing considerable value on the protection of children and their needs and interests is also contained in other international instruments. The United Nations Declaration of the Rights of the Child (1959), in its preamble, states that the child "needs special safeguards and care". The principles of the Convention and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. They help show the values that are central in determining whether this decision was a reasonable exercise of ... power." (internal citations and footnotes omitted)."[97]

Thus, Canadian courts may use international law to interpret national law, based on the presumption that the legislature intended that domestic law would operate within the requirements of the State's international law obligations. Consequently, administrative decision-makers may also implicitly consider Canada's international law obligations, ensuring their decisions not only comply with domestic law but also uphold the rights enshrined in international treaties to which Canada is party.

Case study: Sweden

This example examines Sweden's legal approach to the State's international law obligation of *non-refoulement*, which prohibits returning individuals to a country where they have a well-founded fear of persecution, or where they would otherwise face a real risk of other serious harm. Additionally, it addresses the related issue of refusal of entry, which can also lead to serious human rights violations. Sweden has adopted specific legal provisions to ensure the effective implementation of Treaty Body decisions related to both *non-refoulement* and refusal of entry.

> Sweden, Aliens Act (2005)
>
> "Chapter 5, Section 4
> If an international body that is competent to examine complaints from individuals has found that a refusal-of-entry or expulsion order in a particular case is contrary to a Swedish commitment under a convention, a residence permit shall be granted to the person covered by the order, unless there are exceptional grounds against granting a residence permit.
>
> Chapter 12, Section 12
> If an international body that is competent to examine complaints from individuals makes a request to Sweden for suspension of the enforcement of a refusal-of-entry or expulsion

[97] *See Baker v. Canada,* para 70-71.

order, a stay of enforcement shall be ordered unless there are exceptional grounds for not doing so."

There is a consistent practice of the Swedish authorities granting residence permits to the complainants based on the decisions of the Treaty Bodies.[98]

Alternatively, a court could apply the "legitimate expectations" doctrine, a similar but distinct way of accounting for international treaty obligations, which allows a court to review administrative decisions by asking whether an applicant had a "legitimate expectation" that government actors would act in a way that accounted for international treaty obligations.[99]

Case study: Australia

Australian High Court, Minister for Immigration and Ethnic Affairs v. Teoh, 7 April 1995, (1994) 128 A.L.R. 353

A Malaysian citizen, with a temporary entry permit, married an Australian citizen with whom he had children. His application for permanent residency was rejected on the basis of previous convictions for serious drug offenses. The defendant appealed that administrative decision.[100] The high court held that the immigration department had erred when it did not consider the rights of Teoh's children under the Convention on the Rights of the Child, and he had a "legitimate expectation" that decision-makers would act in accordance with ratified treaties:

"[R]atification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that administrative decision-makers will act in conformity with the Convention and treat the best interests of the children as a primary consideration."[101]

The court also stated:

"[T]he fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which

[98] See, e.g. *Njamba and Balikosa v. Sweden* (322/2007), *M.A.M.A. et al. v. Sweden* (391/2009), *Bakatu-Bia v. Sweden* (379/2009).
[99] *See* David Sloss, *The Role of Domestic Courts in Treaty Enforcement*, Cambridge University Press, 2009, p. 21. The legitimate expectations doctrine, as applied by Australian courts, does not compel a particular outcome in any particular case, but it does require that the administrative decision maker take account of treaty obligations while in the process of making their decision. Note that Canada, in applying the presumption of conformity, formally rejects the legitimate expectations doctrine as necessitating any consistency with international instruments (*see* Baker v. Canada, [1993] 2 S.C.R. 817), though it achieves largely the same result.
[100] *Minister for Immigration and Ethnic Affairs v. Teoh*, Australian High Court, judgment of 7 April 1995, (1994) 128 A.L.R. 353.
[101] Supra note 102.

> Australia is a party, at least in those cases in which the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law.
>
> The court cautioned that this approach may be best suited to the review of administrative decisions, and not when resolving ambiguities in a statute, or developing the common law, because "[J]udicial development of the common law must not be seen as a backdoor means of importing an unincorporated convention into Australian law."[102]

The High Court's decision in this case highlighted the concept of "legitimate expectation", where ratification of an international treaty by the executive creates a legitimate expectation that administrative decisions would be made in conformity with the treaty's principles.

Permitting applicants to appeal their claim on the basis of the Committee's Views

A practical and effective method of giving effect domestically to a Committee's decision is to allow the individuals concerned to appeal or have their case reopen by the domestic authorities on the basis of the Views. This enables courts to re-examine cases in light of new evidence or interpretation provided by the Treaty Bodies. For example, Georgia amended its Criminal Procedure Code to facilitate the domestic reopening of cases when a decision by a Treaty Body finds a violation. Another relevant example is the Uzbekistan Criminal Procedure Code permitting review by the Supreme Court to ascertain whether any error has been made on the basis of new evidence, where this could be brought to light by a Treaty Body's decision on the merits.[103]

Case study: Georgia

> Chapter VII14 – Administrative Legal Proceedings with Regard to the Payment of an Indemnity on the Basis of a Decision of the United Nations Human Rights Treaty Body
> Law of Georgia, No 5013 of 27 April 2016[104]
>
> "Article 2157 – Filing an action in the court for obtaining an indemnity
>
> 1. For the purposes of obtaining an indemnity for pecuniary and non-pecuniary damage a person shall be entitled to file an action in the court with regard to whom there exists a decision of the United Nations Human Rights Committee, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on the Rights of the Child, the Committee against Torture, or the Committee on the Elimination of Racial Discrimination ('the Committee') on the basis of which it has been established that the Convention on the basis of which that Committee was founded, has been violated with respect to that case.

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[102] Supra note 100.
[103] Supreme Council of the Republic of Uzbekistan, Criminal Procedure Code of Uzbekistan, No. 2013-XII, 22 September 1994, art. 522.
[104] Administrative Procedure Code of Georgia, April 2004, amended 27 April 2016. https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ge/ge102en.html.

2. A person or his/her representative shall file an action to the Regional (City) Court for obtaining an indemnity within six months from the entry into force of a decision of the Committee under the first paragraph of this article.

3. The following documents shall be attached to an action to obtain indemnity:

a) a copy of a decision by the Committee on the violation of the Convention with regard to the person and/or with regard to the payment of compensation by the State;
b) a copy of the document certifying the representation where a representative of a person files an action to the court."

X. and Y. v. Georgia, Communication No. 24/2009[105]

Two women, a mother and a daughter, complained of Georgia's failure to prevent abuse by their husband and father, respectively.[106] In April 2016, Georgia amended its criminal procedure code for the reopening of cases in domestic courts when a relevant decision is adopted by the relevant Treaty Bodies.[107] The authors of the communication applied to domestic courts to reopen and review their case in 2016, and in December 2016 the court agreed and granted them compensation, a decision that was upheld on appeal and eventually enforced with compensation actually paid to the authors.[108]

By allowing the reopening of cases based on Treaty Bodies' decisions, Georgia demonstrates a clear pathway for implementing its international law obligations, providing a model for how domestic courts can rely on international human rights law and standards.

Case study: Kyrgyzstan

Kyrgyzstan provides an example of how domestic law can incorporate decisions from Treaty Bodies. The country's legal framework explicitly allows for the reopening of cases based on "newly discovered evidence," which includes decisions from these bodies.

Criminal Procedure Code, Article 451[109]
"1. A verdict, ruling, court ruling that has entered into legal force may be cancelled and the proceedings on the case resumed due to new or newly discovered circumstances.

2. The grounds for the resumption of proceedings in a criminal case are
. . .
2) new circumstances - the circumstances specified in paragraph 4 of this article, which did not exist and were not known to the court at the time of the issuance of the judicial act.

[105] CEDAW, Follow-up report on individual communications, UN Doc. CEDAW/C/, (2019). https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/CEDAW_Followup_Report15October2019.docx
[106] *X and Y v. Georgia*, Centre for Women, Peace, and Security https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/x-and-y-v-georgia/
[107] Ibid.
[108] Ibid.
[109] Criminal Procedure Code of the Kyrgyz Republic, Law No. 129, 28 October 2021, art. 451.

4. New circumstances are:
[....]
3) establishment by international bodies in accordance with international treaties of the Kyrgyz Republic of a violation of human rights and freedoms when considering a given criminal case by a court of the Kyrgyz Republic."

Article 453[110]
"1. The review of a guilty verdict on the basis of new or newly discovered circumstances in favour of the convicted person is not limited by any time limits."
[additional parts omitted]

Article 454[111]
"The right to apply for the resumption of proceedings due to new or newly discovered circumstances belongs to the convicted, acquitted, victim or their legal representatives, lawyer, and prosecutor. The petition shall be submitted to the court that issued the verdict or other judicial decision."

Article 455[112]
"1. The court, having considered a motion to reopen the case due to new or newly discovered circumstances, shall make one of the following decisions:
1) on satisfaction of the petition for reopening the case due to newly discovered circumstances, provided for in clause 4 of part 3 of Article 451 of this Code, and on transferring the case to the prosecutor for organizing pretrial proceedings;
2) on satisfaction of the petition for the resumption of the case due to new circumstances and the annulment of the sentence, ruling, court order or termination of the case;
3) on the refusal to satisfy the petition for reopening the case due to new or newly discovered circumstances.

2. The decision of the court of the first instance and the appellate instance on the refusal to satisfy the petition for the resumption of the case on new and newly discovered circumstances may be appealed to a higher court."

Askarov v. Kyrgyzstan, Communication No. 2231/2012[113]:

Azimjan Askarov, a human rights defender, was detained at the police station after a police officer was killed during an outburst of ethnic violence in southern Kyrgyzstan. He was repeatedly beaten, tortured and humiliated by police, denied medical treatment, and denied a fair trial. He was later convicted of instigating ethnic hatred, inciting disorder and complicity in the murder of the police officer as well as attempted murder of other officers, calling for the mayor to be taken hostage and possession of 10 rounds of ammunition and sentenced to life in prison, a sentence that was upheld on appeal. The Human Rights Committee found that Askarov had been tortured, arbitrarily detained, denied a fair trial, and was not provided with adequate medical treatment. Based on the HRC's View on the

[110] Criminal Procedure Code of the Kyrgyz Republic art. 453.
[111] Criminal Procedure Code of the Kyrgyz Republic art. 454.
[112] Criminal Procedure Code of the Kyrgyz Republic art. 455.
[113] *Askarov v. Kyrgyzstan*, Human Rights Committee Communication No. 2231/2012, Views of 11 May 2016, UN Doc. CCPR/C/116/D/2231/2012 https://juris.ohchr.org/casedetails/2112/en-US

merits the Kyrgyz authorities agreed to reopen the case, consistent with the domestic provisions cited above.

Case study: Kazakhstan

In Kazakhstan there is no explicit provision directing the implementation of Treaty Bodies' decisions. However, in least two cases,[114] national courts ordered compensation on the basis of a decision by a Treaty Body to ensure the fulfilment of international legal obligations.

Gerasimov v. Kazakhstan, Communication 433/2010[115]:

Gerasimov, a Kazakhstan national, alleged that he had been subjected to torture by the police, who attempted to coerce him into making self-incriminating statements regarding a murder case. In 2012, the Committee Against Torture concluded that the facts before it revealed violations of Article 1 (torture), in conjunction with Article 2, paragraph 1 (measures to prevent acts of torture), and Articles 12 (prompt and impartial investigation), 13 (right to complain to, and to have his case promptly and impartially examined), 14 (right to compensation) and 22 (interference with the right of petition) of the CAT.[116] In 2014, following the Committee's decision, the national court recognized the binding nature of the Committee's decision on the State and awarded the complainant compensation for moral damages[117] (approximately EUR 5440) based on the Committee's decision. (CAT/C/53/2)

The Court said:

"[D]uring the court hearing it was reliably established that the decision (Views) of the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment No. 433/2010 of 24.05.2012, adopted based on the results of the investigation into the complaint of the plaintiff Gerasimov A.P. against the Republic of Kazakhstan, established the illegal detention of the plaintiff Gerasimov A.P., illegal methods of conducting criminal proceedings by the police during the interrogation of the plaintiff Gerasimov A.P., the use of torture against him by police officers, in connection with which the Republic of Kazakhstan was obliged to take measures to compensate for the harm caused to the victim of torture and, within 90 days from the date of transmission of this decision, inform the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the measures taken by the state in connection with this decision."

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[114] *Gerasimov v Kazakhstan*, Kostanay City Court, judgment 18 November 2023, Case No. 2-7843/2013 https://bureau.kz/monitoring_2/sudebnaya_praktika/article_6515/

Rasim Bayramov v, Kazakhstan https://documents.un.org/doc/undoc/gen/g14/048/78/pdf/g1404878.pdf

[115] *Gerasimov v Kazakhstan*, Complaint No. 433/2010 https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/Jurisprudence/SummaryCase433-2010.pdf

[116] *Gerasimov v Kazakhstan*, Committee against Torture Communication No. 433/2010, UN Doc. CAT7C/48/D/433/2010.
https://www.worldcourts.com/cat/eng/decisions/2012.05.24_Gerasimov_v_Kazakhstan.htm

[117] Supra note 114.

> In its decision, the Court also addressed the national provisions establishing the competence of the Ministry of Foreign Affairs to provide general supervision and control over the implementation of international treaties.
>
> "[T]hus, in accordance with clause 2 of the Rules for monitoring the implementation of international treaties of the Republic of Kazakhstan, approved by Decree of the Government of the Republic of Kazakhstan dated October 30, 2010 No. 1141, coordination of the activities of government bodies for monitoring the implementation of international treaties of the Republic of Kazakhstan is carried out by the Ministry of Foreign Affairs of the Republic of Kazakhstan (hereinafter referred to as the authorized body), whose competence includes general supervision and control over the implementation of international treaties.
>
> Moreover, the Court addressed the question of ensuring control over the implementation of the decision of the UN Committee as a part of the competence of the general supervision and control over the implementation of international treaties
>
> "[T]he failure of the State Institution 'Ministry of Foreign Affairs of the Republic of Kazakhstan' to take measures to ensure control over the implementation of the decision of the UN Committee resulted in the plaintiff going to court for judicial protection of the violated right and ensuring the fulfillment of international legal obligations by the Republic of Kazakhstan."[118]

The court's approach in the *Gerasimov* case illustrates how national courts in Central Asia can play an essential role in enforcing international human rights obligations, even in the absence of explicit domestic provisions for the direct application of Treaty Bodies' decisions in the domestic legal order. This approach is a significant example that highlights the potential for judicial systems in the region to effectively integrate and apply international human rights decisions within their domestic frameworks.

Case study: Spain

The Spanish Supreme Court in its 17 July 2018 judgment (STS 1263/2018) recognized that the findings of the Views of the CEDAW Committee "[c]onstituted a valid basis ('presupuesto válido') to bring a claim for pecuniary liability of the State, even when there are earlier judgments with apparently final effects."[119]

> *María de los Ángeles González Carreño v. Spain,* Communication No. 47/2012[120]
> González Carreño repeatedly warned Spanish authorities that her ex-partner was dangerous. Despite this, courts allowed him unsupervised visits with their daughter. In 2003, during one such visit, he murdered the child. After exhausting all domestic remedies, González Carreño turned to CEDAW Committee. In 2014, the Committee found that Spain had failed to protect her and her daughter, violating its duty to act with due diligence under international law. Initially Spain refused to act on the Committee's Views,

[118] Supra note 144.
[119] Supreme Court, Administrative Chamber, judgment of 17 July 2018, STS 1263/2018, paras. 11–13.
[120] *González Carreño v. Spain*, CEDAW Communication No. 47/2012, Views adopted 16 July 2014, U.N. Doc. CEDAW/C/57/D/47/2012 (2014).

the case reached the Spanish Supreme Court. In a landmark 2018 ruling, the Court recognized that the CEDAW decision provided a valid legal ground to reopen the matter. It ruled that Spain's failure to implement the Committee's findings breached both its international and constitutional obligations.

The Court said:

"[T]he Committee on the Elimination of Discrimination against Women, in its Views of 16 July 2014 (Communication No. 47/2012), concluded that the Spanish State had failed in its duty to act with due diligence to prevent, investigate, and punish acts of domestic violence, as well as to protect the victim and her daughter. It further considered that the remedies available to the complainant were not effective and that she had been denied access to justice. The Committee recommended, among other measures, that the complainant be provided with appropriate reparation and compensation, and that the State take steps to avoid similar violations in the future."[121]

"[S]uch an obligatory character is derived from Article 24 of the Convention, according to which the States Parties 'undertake to adopt all necessary measures at the national level to achieve the full realization of the rights recognized in the present Convention.' To this must be added the provisions of Article 7.4 of the Optional Protocol, which establishes that the State Party 'shall give due consideration to the views of the Committee, as well as to its recommendations, and shall submit to the Committee a written response, including information on any action taken in the light of the views and recommendations of the Committee, within six months.'"[122]

In this particular case, the strategy involved extraordinary appeal for review that allowed to review the decision that was otherwise considered final, on grounds of new legal obligations arising from the CEDAW Views. As a result, the Court ordered the government to pay compensation in the amount of EUR 600,000. Notably, the Spanish Supreme Court also observed that the absence of a specific domestic procedure providing an opportunity to reinforce the CEDAW Views constituted a breach of a legal and constitutional mandate by the Spanish State.[123] In 2023, the Spanish Supreme Court supported the precedent set in González Carreño by recognizing the legal relevance of the CRPD Committee's Views[124] in the case of Rubén Calleja and his parents in relation to the right to inclusive education and discrimination.[125]

[121] Supreme Court, Administrative Chamber, Judgment STS 1263/2018, para. 11.
[122] Supreme Court, Administrative Chamber, Judgment STS 1263/2018, para. 12.
[123] Supreme Court, Administrative Chamber, Judgment STS 1263/2018, para. 7.
[124] Rubén Calleja Loma & Alejandro Calleja Lucas v. Spain, Committee on the Rights of Persons with Disabilities Communication No. 41/2017, Views adopted 28 August 2020, U.N. Doc. CRPD/C/23/D/41/2017.
[125] Supreme Court, Administrative Chamber, Judgment STS 1597/2023.

CONCLUSIONS

Despite the binding nature of the ICCPR obligations, fully integrating them into domestic legal systems remains a complex task, including for Uzbekistan. This paper has explored States' general obligations under international human rights law, the nature of Treaty Bodies' decisions, and practical examples from various jurisdictions to illustrate how these obligations may be effectively implemented.

Different jurisdictions may use various methods to implement treaty provisions. Although approaches may vary, the ultimate aim is the same: to implement these decisions effectively and provide remedies for individuals whose rights have been violated by an international body.

The experiences of other States in incorporating international human rights obligations into their domestic legal systems provide Uzbekistan with valuable insights. These examples demonstrate how countries may strengthen their compliance with their international law obligations, particularly under the ICCPR and the OP-ICCPR.

One direct and effective approach is the incorporation of international treaties into domestic law. Enacting legislation that explicitly integrates treaties like the ICCPR into national frameworks is among the clearest and most effective ways to convert international obligations into enforceable rights that individuals can seek to claim through domestic courts. This would empower courts and legal institutions to implement international treaties more effectively.

Additionally, the legislative framework must support the direct application of international treaties. Developing laws that permit the direct application of treaties and clearly outline the implementation of Treaty Bodies' decisions is a critical step.

The judiciary plays a key role in ensuring that human rights are respected and enforced. In this context, establishing legal mechanisms to reopen cases based on decisions from international bodies, such as the HRC, is essential. Allowing the reconsidering of cases where human rights violations have been identified ensures justice even after domestic remedies have been exhausted.

Moreover, using international law as an interpretive tool in domestic courts is crucial for ensuring that national legal practices are in line with international human rights obligations. When domestic law is ambiguous or incomplete, referring to international treaties can help ensure judicial interpretations comply with international human rights law and standards. Such an approach enhances the chance of interpreting domestic laws in a way that respects and upholds international human rights law obligations.

By adopting and adapting these methods, Uzbekistan can ensure that its international human rights law obligations be translated into enforceable rights, thereby enhancing human rights protection within the domestic justice system.

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