



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1382/2005

<u>Submitted by:</u>	Mr. Mukhammed Salikh (Salai Madaminov) (represented by counsel, Ms. Salima Kadyrova)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	23 March 2004 (initial submission)
<u>Document references:</u>	<ul style="list-style-type: none">- Special Rapporteur's rule 97 decision, transmitted to the State party on 15 April 2005 (not issued in document form)- CCPR/C/88/D/1382/2005 – Decision on admissibility, adopted on 9 October 2006
<u>Date of adoption of Views:</u>	30 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Unsuccessful attempt by an Uzbek citizen to have access to his criminal case file and a sentence to appeal an unlawful conviction.

Procedural issue: Domestic remedies that do not offer reasonable prospect of success.

Substantive issues: Right to fair trial; right to understand the nature and cause of the charge; minimum procedural guarantees of defence in criminal trial; right to have one's sentence and conviction reviewed by a higher tribunal according to law.

Articles of the Covenant: 14, paragraphs 3 (a), 3 (b), 3 (d) and 3 (e).

Article of the Optional Protocol: 5, paragraph 2(b)

On 30 March 2009 the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1382/2005.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights
Ninety- fifth session

concerning

Communication No. 1382/2005*

<u>Submitted by:</u>	Mr. Mukhammed Salikh (Salai Madaminov) (represented by counsel, Ms. Salima Kadyrova)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	23 March 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1382/2005, submitted to the Human Rights Committee on behalf by Mr. Mukhammed Salikh under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mukhammed Salikh (Salai Madaminov),¹ an Uzbek national born in 1949, leader of the opposition ‘Erk’ party of Uzbekistan, who was granted refugee status in Norway. The communication was submitted on his behalf by Salima Kadyrova, an Uzbek lawyer. While she does not invoke a violation of any specific provisions of the

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. Michael O’Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

¹ Mukhammed Salikh is a pen-name of the author, used interchangeably with the name Salai Madaminov, under which the author was registered at birth.

International Covenant on Civil and Political Rights, the facts of the communication appear to raise issues under article 14 thereof. The Optional Protocol entered into force for the State party on 28 December 1995.

1.2 On 9 August 2005, the Special Rapporteur for New Communications and Interim Measures decided, on behalf of the Committee, that the admissibility of this communication should be examined separately from the merits.

The facts as presented by the author

2.1 On 17 November 2000, the Supreme Court sentenced the author *in absentia* to 15 ½ years' imprisonment, on charges related to the terrorist bombings in Tashkent on 16 February 1999. The charges, trial and sentence allegedly were all politically motivated and linked to his participation in the first presidential elections in Uzbekistan in December 1991, when he was competing with the current incumbent, President Islam Karimov. Neither the author himself nor his family were notified of the criminal proceedings against him. The charges were based on the testimony of several other accused who later claimed, during their respective trials, to have been subjected to torture. The author lists the names of four persons who were forced to testify against him during the preliminary investigation and in court: Zayniddin Askarov, Mamadali Makhmudov, Mukhammad Begzhanov and Rashid Begzhanov. He submits a copy of Askarov's statement delivered on 26 November 2003 during a press conference organized by the National Security Service at Tashkent prison. Allegedly, Askarov used a temporary absence of the National Security Service officer from the press conference room to confess that he gave false testimony against the author, on a promise from the Minister of Internal Affairs that six imprisoned mullas would be spared the death penalty. Reportedly, these mullas were nonetheless executed. Askarov offered public apologies to the author for wrongly accusing him of having links with, and sponsoring, the Islamic Movement of Uzbekistan (IMU).

2.2 In August 2003, the author contacted Salima Kadyrova, a member of the Bar in Samarkand, and on 19 August 2003, authorized her to act on his behalf for an appeal against his conviction. She submits that to this day, no one has accepted to defend the author in Uzbekistan, out of fear of being persecuted by the authorities. Kadyrova obtained a writ and on an unspecified date filed an application with the Chairperson of the Supreme Court, for access to the author's criminal case file and a copy of his judgment and sentence. She was told that consideration of her application would take a week. She returned a week later and was told that she had to provide a written request from her client for access to the files. On an unspecified date, she reapplied to the Supreme Court, this time with a power of attorney dated 19 August 2003, signed by the author under his penname and certified by a Notary Public in Norway, where the author had by then been granted asylum. By letter from the Supreme Court of 26 September 2003, Ms. Kadyrova was informed that the power of attorney did not fulfil the requirements of article 1, part 5, of the Law 'On Notaries' of 26 December 1996, to the effect that notary actions abroad should be performed by consular officers of the Republic of Uzbekistan. Counsel submits that the law does not require the power of attorney to be certified by a notary and refers to articles 4 and 7 of the Law "On the guarantees of attorney's activity and social protection" of 25 December 1998. That law specifies that it is prohibited to request any authorization, except for a writ confirming an attorney's power to act in a case and an attorney's identity card, and to establish other obstacles to an attorney's activity.

2.3 On 7 October 2003, counsel received a second power of attorney from the author, again signed by him under his penname and certified by a Notary Public from Oslo.² On an unspecified date, she reapplied to the court for access to the author's file and a copy of judgment and sentence. On this occasion, she was told that consideration of her application would be postponed for an 'indefinite period'. Not having received an answer after several months, she again applied formally to the Chairperson of the Supreme Court on 2 December 2003; again, she received no reply. On an unspecified date, she wrote to the Chairperson of the Parliament. On 17 December 2003, she was informed that her letter had been forwarded to the Supreme Court. On 19 March 2004, and without having a copy either of his indictment or of his judgment, the author applied to the Chairperson of the Supreme Court requesting to initiate a supervisory review of his unlawful conviction by the Supreme Court.

2.4 Counsel states that the author currently does not have any documents or information about the details of the case against him, nor his conviction *in absentia*. The authorities' refusal to let her access the author's files violates his right, guaranteed under article 30 of the Uzbek Constitution, to have access to documents affecting a citizen's rights and freedoms. She invokes provisions of the Criminal Procedure Code that were violated by the State party in her client's case, including the right to defence, the right to appeal the unlawful actions of an investigator, but does not provide any further substantiation of these claims. Her client continues to live in exile and cannot return to Uzbekistan because of this unlawful conviction.

The complaint

3. Counsel does not invoke a violation of any specific provisions of the International Covenant on Civil and Political Rights by the State party. However, the facts as submitted appear to raise issues under article 14 of the Covenant.

State party's observations on admissibility and merits

4.1 On 10 June 2005, the State party challenged the admissibility of the communication on the basis of article 5, paragraph 2, of the Optional Protocol. It submits that Madaminov's sentence was not appealed on cassation by any of the parties listed in article 498 of the Criminal Procedure Code as authorized to file such appeal: the convicted person, his lawyer, legal representative, the victims and their representatives.

4.2 The State party argues that counsel never proved Madaminov's authorization to act on his behalf, as required under article 50 of the Criminal Procedure Code. On 22 September 2003, she submitted a request to access Madaminov's case file but did not attach to this request any authorization signed by Madaminov, who by then lived abroad. On an unspecified date, she was informed of the necessity to present written authorization from her client. On 26 September 2003, she submitted another request for access to the case file and attached a photocopy of the power of attorney, written on behalf of one Mukhammed Salikh and referring to a passport allegedly issued to him by the Oslo police on 24 August 1999. According to the file, the name of the person convicted is Salai Madaminov, an Uzbek citizen. No document in the case file suggests that Salai Madaminov has changed his first or second names, renounced Uzbek citizenship and

² The difference between the first and the second letters is in the duration of their validity – two and three years respectively.

acquired the Norwegian. Counsel did not submit Mukhammed Salikh's ID nor any document proving that the person on whose behalf the power of attorney was issued and Salai Madaminov are indeed the same person. On an unspecified date, she was informed in writing of the requirements of article 1 of the Law "On Notaries", according to which notary actions abroad should be performed by consular officers of the Republic of Uzbekistan. According to article 91 of this Law, documents prepared abroad with the participation of government officials of other countries are accepted by the notary only after their legalization by the competent office in the Ministry of Foreign Affairs of the Republic of Uzbekistan.

4.3 The author's case could be considered by the Presidium or Plenum of the Supreme Court, provided that counsel or any other person authorized by law to request a supervisory review of this criminal case present documents that comply with the legal requirements. Complaint could also be considered by the Ombudsman, who, under article 10 of the Law "On the Authorized Person of the Oliy Mazhlis (Parliament) of the Republic of Uzbekistan on Human Rights", may conduct her own investigations.

4.4 The State party contends that counsel's claims of a violation of the Criminal Procedural Code in her client's case are unfounded, since she has never been able to access his case file.

4.5 The State party notes that on 12 February 1993, criminal proceedings against Salai Madaminov were instituted. He signed an undertaking not to leave his place of residence without the investigator's permission. Nonetheless, so as to elude criminal liability, he left Uzbekistan illegally on 13 April 1993 and, went into hiding in Turkey. While living abroad, he was involved in activities designed to overthrow the constitutional order of Uzbekistan. On 16 February 1999, 16 people died and 128 were wounded in Tashkent as a result of terrorist bombings.

4.6 Investigation into the bombings produced evidence of Madaminov's intent forcibly to take over the government, and that he had contacted the leaders of the terrorist organization IMU, one Yuldashev and one Khodzhiev. In October 1998, Yuldashev sent two IMU members to Turkey, where Madaminov was then living, who offered Salikh the post of President of a future Islamic State of Uzbekistan if he facilitated raising of funds for the purchase of arms and military equipment; Madaminov accepted. Information about Madaminov's meetings and negotiations with IMU leaders was corroborated by investigation files and testimonies of persons sentenced for their participation in the terrorist bombings.

4.7 The criminal case against Madaminov was opened on the basis of investigation files. Since Madaminov failed to appear in court, he was tried in accordance with article 410 of the Criminal Procedure Code³ with the participation of an attorney, one Kuchkarov, who was defending his

³ Article 410 of the Criminal Procedure Code reads:

Examination of a criminal case by the court of first instance takes place in defendant's presence, the defendant's appearance in court is compulsory.

If the defendant fails to appear in court, examination of a criminal case should be postponed, except for the cases envisaged in part three of the present article. The court has a right to enforce the presence of the defendant who failed to appear in court, as well as a right to impose or change the defendant's restraint measure.

rights in court. Therefore, the State party submits, the requirements under the Criminal Procedure Code were fully met. Representatives of international human rights organizations, the OSCE, foreign embassies and mass media also attended the trial as observers. On 17 November 2000, the Judicial Chamber of the Supreme Court sentenced Madaminov, among other defendants, to 15 ½ years imprisonment on a total of 13 charges, including premeditated murder and terrorism.

Author's comments on State party's observations

5.1 On 9 February 2006, the author refuted the State party's challenge of the identity of Salai Madaminov and Mukhammed Salikh, and provided copy of a diplomatic passport of the (former) Union of Soviet Socialist Republics (USSR), issued by the Ministry of Foreign Affairs of the Uzbek Soviet Socialist Republic on 26 April 1990. There, he is identified as "Madaminov Salai (Moukhammad Salikh)". He provided copy of the court judgment concerning Rashid Begzhanov, Mamadali Makhmudov, Mukhammad Begzhanov, given by the Tashkent Regional Court on 18 August 1999. In this judgment, the author is referred to as "Madaminov Salai (Moukhammad Salikh)". He added that since 1971 he has published more than 20 books in Uzbekistan under his pen-name, Mukhammed Salikh.⁴ He further confirmed the power of authority that he gave to Salima Kadyrova in 2003 to act on his behalf. The author reiterated that the criminal case against him was fabricated and referred to evidence he presented in his initial submission.

5.2 By letter of 17 February 2006, counsel challenged the State party's claim about non-exhaustion of available domestic remedies. She stated that the subject matter of the complaint to the Committee, on behalf of her client, was exactly that she was prevented by the State party from submitting an appeal for supervisory review of the author's conviction by not granting her access to the author's case file and a copy of his sentence. She denied that she had not proven the author's authorization for her to act on his behalf, as required by article 50 of the Criminal Procedure Code. The State party itself mentioned that she applied for access to the author's case file twice, whereas in fact she submitted six requests without ever receiving a positive reply from the Supreme Court. She also referred to article 135 of the Civil Code, according to which a power of attorney should be either in a simple written form or it should be certified by a notary. She referred again to article 7 of the Law "On the guarantees of attorney's activity and social protection" that required only that a writ confirming an attorney's permit to participate to a case and an attorney's identity card were required for an attorney's participation in a case.

5.3 Counsel invoked article 22 of the Uzbek Constitution, which guarantees legal protection by the Republic of Uzbekistan of all its citizens on the territory of Uzbekistan and abroad. She submitted that there is no information that Salikh ever renounced his Uzbek citizenship and, therefore, he should be able to exercise his right to avail himself of the services of an attorney.

Examination of a case in the absence of a defendant is allowed only if the defendant is outside of the territory of Uzbekistan and fails to appear in court, and his absence does not prevent the court from establishing truth on the case; or when the defendant was removed from the court room on the basis of article 272 of the present Code.

⁴ The author submitted copies of cover pages of two books published by the state publishing houses of the Uzbek Soviet Socialist Republic where his name appears as "Mukhammed Salikh (Madaminov Salai)".

She denied that the author's criminal case could have been considered by the Presidium or Plenum of the Supreme Court and argued that, in order for her to submit an appeal for supervisory review, she should be granted access to the criminal case file. She repeated that that she was deliberately prevented from accessing her client's file.

5.4 Regarding the State party's claim that individual human rights complaints can be also considered by the Ombudsman, counsel referred to article 9 of the Law invoked by the State party that prohibits Ombudsman to consider the issues falling in the court's jurisdiction.

5.5 As to the State party's challenge of the identity of Salai Madaminov and Mukhammed Salikh, counsel recalled that the sentence of the Tashkent Regional Court of 18 August 1999 and the decision of the Supreme Court of 25 October 1999 on case No.03-1035k-99 mention her client as "Madaminov Salai (Moukhammed Salikh)". To be able to list both names, the investigator was required to verify the person's identity, under article 98 of the Uzbek Criminal Procedure Code.

5.6 As to the legality of the author's conviction *in absentia*, counsel referred to part 1 of article 410 of the Criminal Procedure Code, which states that "the defendant's appearance in court is compulsory". The State party's reference to the exception from this rule (part 3 of article 410), allowing consideration of the case if the defendant is not present on the territory of Uzbekistan, is subject to the procedural guarantees of article 420 of the Criminal Procedure Code. In the absence of one of the defendants, the court should have suspended consideration of the case with regard to the missing defendant.

Decision on admissibility

6.1 During its eighty-eighth session, on 9 October 2006, the Committee considered the admissibility of the communication. It noted the State party's argument that, on one hand, Mukhammed Salikh, the author of the present communication, and, on the other hand, Salai Madaminov, a person whose conviction by a court of the State party was challenged before the Committee, are not identical. The Committee observed, however, that the author has produced copies of an ID issued by the State party's predecessor (the former USSR), and of judgments issued by the State party's own courts, where both names – Mukhammed Salikh and Salai Madaminov – were simultaneously used to identify the author. Given this situation, the Committee considered that the identity of the author should not be questionable to the State party, and concluded that it was not precluded from examining the communication on this ground.

6.2 Furthermore, the Committee noted that the State party had challenged the admissibility of the communication for non-exhaustion of domestic remedies, as the author's conviction had not been appealed to a higher tribunal and to the Ombudsman. Counsel in turn argued that she could not access her client's files and appeal his conviction with any reasonable prospect of success, as the State party deliberately prevented her from accessing her client's file, without which she would be unable to submit an appeal for supervisory review. Contrary to the applicable law, she was requested to present a power of attorney from the author authorizing her to act on his behalf that had to be certified by consular staff of the Republic of Uzbekistan. As this requirement was not provided for by law, the Committee did not consider it to be a bar to admissibility.

6.3 The Committee recalled its jurisprudence that article 5, paragraph 2(b), did not oblige complainants to exhaust domestic remedies that offer no reasonable prospect of success.⁵ It reaffirmed that applications to an Ombudsman institution did not constitute an “effective remedy” for the purposes of article 5, paragraph 2(b), of the Optional Protocol.⁶ The Committee noted that the facts of the communication appeared to raise issues under article 14 of the Covenant, and considered that the author had exhausted domestic remedies, for the purposes of article 5, paragraph 2(b) of the Optional Protocol. Accordingly, the Committee declared the communication admissible.

State party’s observations on the merits

7.1 On 27 December 2006, the State party claimed that the decision on admissibility adopted by the Committee in the present communication was unfounded. It reiterated that Madaminov was tried in accordance with article 410, part 3, of the Criminal Procedure Code (participation of a defendant in court proceedings), because he had failed to appear in court. An attorney defending his rights participated in the pre-trial investigation and in court; therefore, Madaminov’s right to defence was not violated. The State party recapitulated its earlier arguments, summarised in paragraph 4.2 above and added that under article 66 of the Law “On Notaries”, a notary attests to the authenticity of a copy of a document’s duplicate, provided that the duplicate itself was either duly attested by a notary or issued by the same entity that produced the original document. In the latter case, a duplicate should be issued on that entity’s official letterhead, stamped and duly contain a reference mark, indicating that the original document was being kept by the entity in question itself. The State party drew the Committee’s attention to the fact that a writ obtained by Madaminov’s counsel stated that it was issued to allow her to get access to the criminal case file of Mukhammed Salikh.

7.2 The State party further submitted that Madaminov’s counsel did not comply with the requirements of the Law “On Notaries”, even though under article 3 of the Law “On Legal Profession (‘advocatura’)” of 27 December 1996, a lawyer called to the bar undertakes strictly to comply with the Constitution and the laws of Uzbekistan. Moreover, under article 7 of the same Law, attorneys are obliged to comply with the requirements of the law in force in Uzbekistan in the exercise of their professional duties.

Author’s comments on the State party’s observations on the merits

8.1 On 9 January 2007, the author commented on the State party’s observations. He stated that the State party’s reliance on article 410, part 3, of the Criminal Procedure Code in justification for having conducted his trial *in absentia* is misguided, because part 1 of the same article makes the defendant’s appearance in the court of first instance compulsory. On the State party’s argument that ‘an attorney defending Madaminov’s rights participated in the pre-trial investigation and in court’, the author claimed that an attorney who was merely present at, rather than ‘participated in’, the court proceedings, without either a writ or a power of attorney from his

⁵ Communication No. 594/1992, *Phillip Irving v. Trinidad and Tobago*, Views adopted on 20 October 1998, para.6.4.

⁶ Communication No. 334/1988, *Michael Bailey v. Jamaica*, Views adopted on 31 March 1993.

part, could not have properly defended his interests in court. The author submitted that an attorney could not be present at the court proceedings in the absence of his/her client.

8.2 With regard to the State party's claims that counsel failed to provide a document that would prove that she had been authorised by Madaminov to act on his behalf in the supervisory review instance and that a writ referred to the name of 'Mukhammed Salikh', the author reiterated counsel's argument that she did comply with the requirements of article 50 of the Criminal Procedure Code by presenting a writ, confirming that she had been authorised to act on his behalf. The author added that the Committee has already established at the admissibility stage that his identity should not have been questionable in any way to the State party. He affirmed that he had never renounced his Uzbek citizenship, had never been a citizen of Norway and had never submitted an application to obtain one. A travel document issued by the Norwegian police on 24 August 1999 did not endow him with the citizenship of Norway and, therefore, he should be entitled to benefit from all the rights guaranteed to a citizen of Uzbekistan by the Constitution and other laws.

8.3 Finally, the author argued that the State party's reference to the Law "On Notaries" was irrelevant to his case, because neither the issuance of a writ, nor the requests to the Supreme Court and the Parliament to grant access to his criminal case file, needed any attestation by a notary.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee has taken note of the State party's observations of 27 December 2006, which challenge the admissibility of the communication. It considers that the arguments raised by the State party are not of such nature as to require the Committee to review its admissibility decision, owing in particular to the lack of new relevant information, such as a copy of the judgment and sentence of the Supreme Court of 17 November 2000 concerning the author, as well as a copy of the trial transcript. The Committee therefore sees no reason to review its admissibility decision.

9.3 The Committee proceeds to consideration of the case on the merits. It notes that although neither the author nor his counsel have invoked violations of any specific provisions of the Covenant by the State party, their allegations and the facts as submitted to the Committee appear to raise issues under article 14, paragraph 3 (a), (b), (d) and (e), of the Covenant.

9.4 In the first place, the Committee must examine whether the proceedings on the basis of which the author of the communication was sentenced to 15 ½ years' imprisonment disclose any breach of rights protected under the Covenant. Under article 14, paragraph 3, everyone is entitled to be tried in his presence and to defend himself in person or through legal assistance. This provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings *in absentia* impermissible, irrespective of the reasons for the

accused person's absence.⁷ Indeed, proceedings *in absentia* may in some circumstances (for instance, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his right to be present) be permissible in the interest of the proper administration of justice. Nevertheless, the effective exercise of the rights under article 14 presupposes that the necessary steps should be taken to inform the accused of the charges against him and notify him of the proceedings⁸ (article 14, paragraph 3 (a), of the Covenant). Judgment *in absentia* requires that, notwithstanding the absence of the accused, all due notifications has been made to inform him or the family of the date and place of his trial and to request his attendance. Otherwise, the accused, in particular, is not given adequate time and facilities for the preparation of his defence (article 14, paragraph 3 (b)), cannot defend himself through legal assistance of his own choosing (article 14, paragraph 3 (d)) nor does he have the opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (article 14, paragraph 3 (e)).⁹

9.5 The Committee acknowledges that there must be certain limits to the efforts that can reasonably be expected of the competent authorities with a view to establishing contact with the accused. With regard to the present communication, however, those limits need not be spelled out, for the following reasons. The State party has not challenged the author's contention that neither he nor his family were notified of the criminal proceedings against the author; and that an attorney, one Kuchkarov, who, as argued by the State party, defended his rights in court, was not, in fact, the attorney of his own choosing. In addition, no indication has been given by the State party about any steps taken by its authorities to transmit to the author the summonses for his appearance in court. In this regard, the Committee regrets that the State party has not complied with its request to make available to it a copy of the judgment in the author's case, as well as a copy of the trial transcript – both are documents that could have shed light upon the issue at stake. These factors, taken together, lead the Committee to conclude that the State party failed to make sufficient efforts with a view to informing the author about the impending court proceedings, thus preventing him from preparing his defence or otherwise participating in the proceedings. In the view of the Committee, therefore, the State party has violated the author's rights under article 14, paragraph 3 (a), 3 (b), 3 (d) and 3 (e), of the Covenant.

9.6 Under these circumstances, the Committee considers that it is not necessary to examine issues relating to the supervisory review process.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of the author's rights under articles 14, paragraph 3 (a), 3 (b), 3 (d) and 3 (e), of the Covenant.

⁷ Communication No. 16/1977, *Mbenge v. Zaire*, Views adopted on 25 March 1983, paragraph 14.1.

⁸ Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 31.

⁹ *Supra* n.7, paragraph 14.1.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, 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 Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
