



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**  
**One hundredth and first session**  
14 March - 1 April 2011

**Views**

**Communication No. 1470/2006**

<u>Submitted by:</u>	Nurbek Toktakunov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	12 April 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 9 May 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	28 March 2011

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Denial of access to State-held information of public interest.
<i>Substantive issues:</i>	Right to seek and receive information; effective remedy; access to court; right to a fair hearing by an independent and impartial tribunal.
<i>Procedural issues:</i>	Level of substantiation of claim
<i>Articles of the Covenant:</i>	2, read together with 14, paragraph 1; 19, paragraph 2;
<i>Article of the Optional Protocols:</i>	2

On 28 March 2011, 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. 1470/2006.

[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 (one hundredth and first session)**

concerning

#### **Communication No. 1470/2006\*\***

Submitted by: Nurbek Toktakunov (not represented by counsel)  
Alleged victim: The author  
State party: Kyrgyzstan  
Date of communication: 12 April 2006 (initial submission)

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

Meeting on 28 March 2011,

Having concluded its consideration of communication No. 1470/2006, submitted to the Human Rights Committee by Mr. Nurbek Toktakunov 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. The author of the communication is Mr. Nurbek Toktakunov, a Kyrgyz national born in 1970. He claims to be a victim of violations by Kyrgyzstan of his rights under article 2, read together with article 14, paragraph 1; and article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 7 January 1995. The author is not represented.

#### **The facts as presented by the author**

2.1 On 3 March 2004, the Youth Human Rights Group (YHRG), a public association for which the author works as a legal consultant, requested the Central Directorate of

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli Mr. Krister Thelin and Ms. Margo Waterval.

An individual opinion signed by Committee member Mr. Gerald L. Neuman is appended to the text of the present Views.

Corrections (CDC) of the Ministry of Justice (MoJ) to provide it with information on the number of individuals sentenced to death in Kyrgyzstan as of 31 December 2003, as well as on the number of individuals sentenced to death and currently detained in the penitentiary system. This request was made pursuant to article 17.8 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (29 June 1990) (Copenhagen Document), according to which the participating States have agreed to make available to the public information regarding the use of the death penalty. On 5 April 2004, the CDC refused to provide this information, due to its classification as 'confidential' and 'top secret' by the by-laws of the Kyrgyzstan.

2.2 On 26 June 2004, the author filed a complaint with the MoJ challenging the CDC's refusal to provide information, relying on article 5 of the Law 'On protection of state secrets' of 14 April 1994. Under this provision, classification as 'confidential' and 'top secret' applies to information constituting state, military and service secrets:

'[...] Information, the divulging of which may entail serious consequences for defence capability, safety, economic and political interests of the State, shall be classified as a state secret.

The restriction stamps 'very important' and 'top secret' shall be conferred on information which is classified as the state secret.

Information of a military character, the divulging of which may be to the detriment of the armed forces and interests of the Kyrgyz Republic, shall be classified as a military secret.

The restriction stamps 'top secret' and 'confidential' shall be conferred on information classified as the military secret.

Information, the divulging of which may have a negative impact on defence capability, safety, or economic and political interests of the Kyrgyzstan, shall be classified as a service secret. This information contains some data falling within the category of state or military secret but does not disclose such secret in its entirety.

The restriction stamp 'confidential' shall be conferred on information classified as the service secret [...]

2.3 The author argued that the information on individuals sentenced to death had to do with human rights and fundamental freedoms and that its disclosure could not have had any negative impact on defence capability, safety, or economic and political interests of the State. Therefore, it did not fulfil the criteria in article 5 of the Law 'On protection of state secrets' for it to be classified as the state secret. The author further referred to Resolutions Nos. 2003/67 and 2004/60 of the Commission on Human Rights on the question of the death penalty, which call upon all States that maintain the death penalty to make available to the public information on the imposition of the death penalty and any scheduled execution.<sup>1</sup> He finally referred to article 17.8 of the Copenhagen Document (see, paragraph 2.1 above) and recalled that, pursuant to article 10.1 of this document, the participating States have agreed to respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms. On an unspecified date, the author's complaint of 26 June 2004 was transmitted by the MoJ to the CDC, for action.

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<sup>1</sup> See, paragraph 5 (c) of the Resolutions Nos. 2003/67; see also resolution 2004/60 of the Commission on Human Rights on the question of the death penalty.

2.4 On 9 September 2004, the CDC reiterated its previous position. On 7 December 2004, the author filed a complaint about a violation of his right to seek and receive information to the Bishkek Inter-District Court, referring to article 19, paragraph 2, of the Covenant. In his complaint, the author argued that he requested the information on behalf of a public association and on his own behalf, as a Kyrgyz citizen. He cast doubt on whether the by-laws on the secret nature of information on the number of individuals sentenced to death comply with article 16, paragraph 9, of the Constitution and the Law 'On guarantees and free access to information' of 5 December 1997. According to article 3 of this Law, any restrictions on access to and dissemination of information shall be provided by law. On the basis of articles 262-266 of the Civil Procedure Code, the author requested the Bishkek Inter-District Court to instruct the MoJ to provide him the requested information and to bring by-laws and other statutory acts of the CDC in compliance with the laws of the Kyrgyz Republic.

2.5 On 17 December 2004, the Bishkek Inter-District Court dismissed the author's complaint on the grounds that the subject matter fell outside of its jurisdiction to adjudicate civil proceedings. On 25 December 2004, the author filed a privy motion in the Bishkek City Court, challenging the decision of the Bishkek Inter-District Court. In addition to reiterating his claim about the right to seek and receive information, he referred to article 262 of the Civil Procedure Code, which provides for the right to challenge in court an action/ omission of a state body or state official if one considers that his or her rights and freedoms have been violated. In particular, the author challenged the MoJ's omission to act, since it failed to direct the CDC to provide him the requested information and to bring by-laws and other statutory acts into compliance with the laws of Kyrgyzstan. The author also submitted that he could not challenge the compatibility of the by-laws with Kyrgyz laws directly, because article 267, paragraph 5, of the Civil Procedure Code requires an applicant to provide a copy of the contested statutory act, which was not possible in his case due to the confidentiality of the by-laws in question.

2.6 On 24 January 2005, the Bishkek City Court upheld the decision of the Bishkek Inter-District Court, on the grounds that the information on individuals sentenced to death was made secret by the Ministry of Interior and access to such information was restricted. Therefore, the actions of the MoJ in relation to the refusal to provide information could not be appealed within the framework of administrative and civil proceedings. According to article 341 of the Civil Procedure Code, a decision of the appeal court adopted on the basis of a privy motion is final and cannot be appealed further.

2.7 The author's repeated request of 7 June 2005 for information on the individuals under the sentence of death was again refused by the MoJ on 27 June 2005. The MoJ referred to article 1 of the Law 'On protection of state secrets', according to which information constituted a state secret if it was 'controlled by the state and restricted by the special lists and regulations elaborated on the basis and in compliance with the Kyrgyz Constitution'. The MoJ further explained that, in compliance with the provisions of Governmental Resolution No. 267/9 of 7 July 1995 'On the approval of the List of the most important data constituting state secret, and the Instruction on the procedure of establishment of the level of secrecy of data contained in papers, documents and goods' (document itself classified as 'top secret'), the Ministry of Interior adopted a confidential internal decree 'On the approval of the List of data within the system of the Ministry of Interior which is subject to classification as secret'. This decree was endorsed by the National Security Service.

2.8 The MoJ further explained that, according to the above-mentioned confidential decree of the Ministry of Interior, any information on the number of individuals sentenced to capital punishment was classified as 'top secret'. According to the Resolution of the Government No. 391 of 20 June 2002, the penitentiary system was transferred from the

Ministry of Interior to the MoJ. Therefore, the decree of the Ministry of Interior was in force for the MoJ for as long as there was no decree on this matter drafted and adopted by the MoJ. The MoJ further stated that at that time, the MoJ was drafting a number of new by-laws concerning the penitentiary system, which included a list of data within the system of the CDC of the MoJ that would be subject to classification as secret. This new list was expected to be endorsed at a later stage by relevant state bodies. Thus, the MoJ concluded that the refusal to provide information on the number of individuals sentenced to death was justified and in compliance with the law in force.

### **The complaint**

3.1 The author submits that the refusal by the authorities to provide the YHRG with information on the number of individuals sentenced to death also affected him, as a member of the public association in question, and resulted in the restriction of his individual right of access to information. Furthermore, in his complaint to the Bishkek Inter-District Court of 7 December 2004, he specifically stated that he was interested in the requested information not only as a member of a public association but also as a citizen. The author claims that by denying him access to information of public interest, the State party violated his right to seek and receive information guaranteed by article 19, paragraph 2, of the Covenant. For the reasons advanced by the author at the domestic level (see, paragraphs 2.3 – 2.4 above), the author argues that the restriction of his right to seek and receive information is not justified under article 19, paragraph 3, of the Covenant, because the classification of information on the number of individuals sentenced to death as ‘secret’ is not provided by the laws of the Kyrgyz Republic and is unnecessary. The author adds that the by-laws governing access to this type of information are also classified as confidential and for this reason cannot be challenged in courts.

3.2 The author further claims that, by failing to provide him with an effective judicial remedy for a violation of his right of access to information, the State party’s authorities have also violated his rights under article 2, read together with article 14, paragraph 1, of the Covenant.

### **State party's observations on the merits**

4.1 On 26 July 2006, the State party submits that, according to the information provided by the CDC of the MoJ, general data on the mortality rates in the penitentiary system, as well as data on individuals sentenced to death, has been declassified and pursuant to the by-laws it can now be used exclusively ‘for service purposes’. This information remains confidential for the press.

4.2 The State party provides the Committee with the following statistical data made available by the CDC: (a) as of 20 June 2006, 164 individuals have been sentenced to death; (b) 16 individuals were sentenced to death in 2003, 23 individuals in 2004, 20 individuals in 2005 and 6 individuals in 2006; and (c) 309 individuals have died in the penitentiary system in 2003, 233 individuals in 2004, 246 individuals in 2005 and 122 individuals in 2006.

### **Author’s comments on the State party’s observations**

5.1 On 25 September 2006, the author submitted his comments on the State party’s observations. He refers to rule 97 of the Committee’s Rules of Procedure and notes that the State party was supposed to submit its observations on the admissibility and merits of his communication. Instead, it confined itself to transmitting to the Committee highly contradictory information provided by the CDC of the MoJ.

5.2 The author argues that the data on individuals sentenced to death cannot be considered declassified as long as the general public's and press' access to such data is restricted by the by-laws. He submits that, pursuant to article 9 of the Law 'On protection of state secrets', decisions on declassification of information are adopted by the Government on the basis of proposals put forward by relevant state bodies. The author argues that there is no information about the adoption by the Government of such decisions in the database of statutory acts adopted by the Kyrgyzstan. He adds that, in its observations of 26 July 2006, the State party also does not provide any reference information of such a decision that would enable the Committee to identify it. The author concludes that either the CDC provides the Committee with unreliable information or it deliberately tries to cloud the situation.

5.3 The author submits that the State party did not address his allegations, namely: (a) that information on the number of individuals sentenced to death had to do with human rights and fundamental freedoms and could not have had any negative impact on defence capability, safety, or economic and political interests of the Kyrgyzstan and, therefore, should not be classified as secret; (b) that he was not granted an effective judicial remedy to contest a violation of the right of access to State-held information and that by denying him judicial protection, the State party has restricted his access to justice.

5.4 The author concludes that by not refuting any of his allegations, the State party has effectively accepted them. He adds that by merely submitting to the Committee statistical data on the number of individuals sentenced to death, the State party did not provide him with an effective remedy because the by-laws that classify this data as secret are still in force and his right to access to justice has not been vindicated.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

6.3 As to the author's *locus standi* under article 1 of the Optional Protocol, the Committee notes that the specific information sought by him, i.e. the number of individuals sentenced to death in the Kyrgyzstan, is considered to be of public interest in Resolutions Nos. 2003/67 and 2004/60 of the Commission on Human Rights on the question of the death penalty, and in the Copenhagen Document, which was signed by the State party<sup>2</sup>. In this respect, the Committee notes that the Copenhagen Document imposes a special obligation to the authorities to provide information on the use of death penalty, and that this was accepted by the State party. It also notes that, in general, judgments rendered in criminal cases, including those imposing death penalty, are public. The Committee further notes that the reference to the right to 'seek' and 'receive' 'information' as contained in article 19, paragraph 2, of the Covenant, includes the right of individuals to receive State-held information, with the exceptions permitted by the restrictions established in the

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<sup>2</sup> Article 17.8 of the Copenhagen Document (see, paragraph 2.1 above).

Covenant. It observes that the information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The Committee also recalls its position in relation to press and media which includes a right for the media actors to have access to information on public affairs<sup>3</sup> and the right of the general public to receive media output.<sup>4</sup> It further notes that among the functions of the press and media are the creation of forums for public debate and the forming of public or, for that matter, individual opinions on matters of legitimate public concern, such as the use of the death penalty. The Committee considers that the realisation of these functions is not limited to the media or professional journalists, and that they can also be exercised, for example, by public associations or private individuals. With reference to its conclusions in *Communication S.B. v. Kyrgyzstan*<sup>5</sup>, the Committee also notes that the author in the present case is a legal consultant of a human rights public association, and as such, he can be seen as having a special “watchdog” functions on issues of public interest. In light of the considerations listed above, in the present communication, the Committee is satisfied, due to the particular nature of the information sought, that the author has substantiated, for purposes of admissibility, that he, as an individual member of the public, was directly affected by the refusal of the State party’s authorities to make available to him, on request, the information on use of the death penalty.

6.4 The Committee has further noted the author’s claim that his rights under article 2, read together with article 14, paragraph 1, of the Covenant, have been violated. It considers, however, that the author has failed to sufficiently substantiate his allegations, for purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further considers that the remaining part of the author’s allegations under article 19, paragraph 2, as he was denied access to information of public interest, have been sufficiently substantiated, for purposes of admissibility, and declares this part of the communication admissible.

#### *Consideration of the merits*

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

7.2 The Committee notes that, in its submission on the author’s allegations, the State party has not addressed any of the arguments raised by him in the communication to the Committee with regard to article 19, paragraph 2, of the Covenant. The State has merely stated that ‘data on individuals sentenced to death had been declassified’ and that ‘pursuant to the by-laws it could be used exclusively for service purposes’ but remained confidential for the press. In the absence of any other pertinent information from the State party, due weight must be given to the author’s allegations, to the extent that they have been properly substantiated.

7.3 With regard to article 19, the author claimed that the refusal by the State party’s authorities to provide him with information on the number of individuals sentenced to death resulted in a violation of his right to seek and receive information guaranteed by article 19, paragraph 2, of the Covenant. He specifically argued that the classification of information

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<sup>3</sup> Communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999, paragraph 13.4.

<sup>4</sup> Communication No. 1334/2004, *Mavlonov and Sa’di v. Uzbekistan*, Views adopted on 19 March 2009, paragraph 8.4.

<sup>5</sup> Communication No. 1877/2009, Inadmissibility decision adopted on 30 July 2009.



on the number of individuals sentenced to death as ‘secret’ is not ‘provided by law’ and is unnecessary to pursue any legitimate purpose within the meaning of article 19, paragraph 3. The first issue before the Committee is, therefore, whether the right of the individual to receive State-held information, protected by article 19, paragraph 2, of the Covenant, brings about a corollary obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Covenant, the State is allowed to restrict access to the information in a specific case.

7.4 In this regard, the Committee recalls its position in relation to press and media freedom that the right of access to information includes a right of the media to have access to information on public affairs<sup>6</sup> and the right of the general public to receive media output.<sup>7</sup> The Committee considers that the realisation of these functions is not limited to the media or professional journalists, and that they can also be exercised by public associations or private individuals (see paragraph 6.3). When, in the exercise of such ‘watchdog’ functions on matters of legitimate public concern, associations or private individuals need to access State-held information, as in the present case, such requests for information warrant similar protection by the Covenant to that afforded to the press. The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State. In these circumstances, the Committee is of the opinion that the State party had an obligation either to provide the author with the requested information or to justify any restrictions of the right to receive State-held information under article 19, paragraph 3, of the Covenant.

7.5 The next issue before the Committee is, therefore, whether in the present case such restrictions are justified under article 19, paragraph 3, of the Covenant, which allows certain restrictions but only as provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

7.6 The Committee notes the author’s argument, corroborated by the material contained on file, that the by-laws governing access to the information requested by him are classified as confidential and, therefore, inaccessible to him as an individual member of the general public and legal consultant of a human rights public organisation. It also notes the State party’s assertion that ‘data on individuals sentenced to death had been declassified’ and that, ‘pursuant to the by-laws it could be used exclusively for service purposes’ but remained confidential for the press. The Committee considers that in the circumstances, the regulations governing access to information on death sentences in the State party cannot be seen as constituting a “law” meeting the criteria set up in paragraph 3, of article 19, of the Covenant.

7.7 The Committee has noted the author’s claim that information on the number of individuals sentenced to death could not have had any negative impact on defence capability, safety, or economic and political interests of the Kyrgyzstan and, therefore, it did not fulfil criteria spelled out in the Law ‘On protection of state secrets’ for it to be

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<sup>6</sup> Communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999, paragraph 13.4.

<sup>7</sup> Communication No. 1334/2004, *Mavlonov and Sa’di v. Uzbekistan*, Views adopted on 19 March 2009, paragraph 8.4.

classified as a state secret. The Committee regrets the lack of response by the State party authorities to this specific argument raised by the author both at the domestic level and in his communication to the Committee. The Committee reiterates the position set out in Resolutions Nos. 2003/67 and 2004/60 of the Commission on Human Rights, and in the Copenhagen Document (see, paragraph 6.3 above) that the general public has a legitimate interest in having access to information on the use of the death penalty and concludes that, in the absence of any pertinent explanations from the State party, the restrictions to the exercise of the author's right to access information on the application to the death penalty held by public bodies cannot be deemed necessary for the protection of national security or of public order (*ordre public*), public health or morals, or for respect of the rights or reputations of others.

7.8 The Committee therefore concludes that the author's rights under article 19, paragraph 2, of the Covenant, have been violated in the present case, for the reasons exposed in paragraphs 7.6 and 7.7 above.

8. 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 a violation by the State party of article 19, paragraph 2.

9. 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. The Committee considers that in the present case, the information provided by the State party in paragraphs 4.2 above constitutes such a remedy to the author. The State party should also take all necessary measures so as to prevent occurrence of similar violations in the future and to guarantee the accessibility of information on death penalty sentences imposed in Kyrgyzstan.

10. 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 when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party 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.]

## Appendix

### Individual opinion by Committee member, Mr. Gerald L. Neuman, (concurring)

I agree with the Committee that the State party has violated the author's rights under Article 19(2) with regard to the requested information. I would prefer, however, to explain that conclusion in a slightly different manner.

In *Gauthier v. Canada*, the Committee found that the exclusion of a journalist from the press facilities of the legislature violated his right to seek, receive and impart information under Article 19(2). The Committee observed that the right to take part in the conduct of public affairs, protected by Article 25, read together with Article 19, implied "that citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members."<sup>1</sup> At the same time, the Committee recognized "that such access should not interfere with or obstruct the carrying out of the functions of elected bodies, and that a State party is thus entitled to limit access," so long as the restrictions on access were compatible with the provisions of the Covenant.<sup>2</sup> In response to Canada's argument that a balance needed to be achieved between the right of access and "the effective and dignified operation of Parliament and the safety and security of its members," the Committee agreed "that the protection of Parliamentary procedure can be seen as a legitimate goal of public order" within the meaning of Article 19(3).<sup>3</sup> But restrictions for this purpose must be "necessary and proportionate to the goal in question and not arbitrary."<sup>4</sup> The criteria determining access "should be specific, fair and reasonable, and their application should be transparent."<sup>5</sup> The restrictions at issue in *Gauthier* did not satisfy that standard. Neither do the restrictions at issue in the present communication.

The Committee observes in paragraph (7.4) of its present Views that "the right of access to information includes a right of the media to have access to information on public affairs and the right of the general public to receive media output." While I do not object to this formulation, I would add that the right of journalists to have access to information held by government and the right of the general public to read what newspapers print have different bases in the Covenant.

I believe that the right of access to information held by government arises from an interpretation of Article 19 in the light of the right to political participation guaranteed by Article 25 and other rights recognized in the Covenant. It is not derived from a simple application of the words "right . . . to receive information" in Article 19(2), as if that language referred to an affirmative right to receive all the information that exists.

The central paradigm of the right to freedom of expression under Article 19(2) is the right of communication between a willing speaker and a willing listener. Article 19 protects strongly (though not absolutely) the right of individuals to express information and ideas voluntarily, and the correlative right of the audience to seek out voluntary communications and to receive them. Too often this essential right has been violated by government efforts to suppress unwelcome truths and unorthodox ideas. Sometimes governments accomplish

<sup>1</sup> Communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999, para. 13.4.

<sup>2</sup> *Gauthier v. Canada* (note 1 above), para. 13.4.

<sup>3</sup> *Gauthier v. Canada* (note 1 above), para. 13.6.

<sup>4</sup> *Gauthier v. Canada* (note 1 above), para. 13.6.

<sup>5</sup> *Gauthier v. Canada* (note 1 above), para. 13.6.

this suppression directly by blocking communications transmitted through old or new technologies. Sometimes they punish citizens who possess forbidden texts or who receive forbidden transmissions. Article 19 protects the right of individuals to read written works even when the author of the work is beyond the jurisdiction of the State party, including authors who live in other States.<sup>6</sup> That is one of the reasons why the Covenant, like the Universal Declaration of Human Rights, refers explicitly to a right to “seek, receive and impart information and ideas ... regardless of frontiers.”

The traditional right to receive information and ideas from a willing speaker should not be diluted by subsuming it in the newer right of access to information held by government. This modern form of “freedom of information” raises complexities and concerns that can justify limitations on the satisfaction of the right, based on considerations such as cost or the impairment of government functions, in circumstances where the suppression of a similar voluntary communication would not be justified. In explaining and applying the right of access, it is important to observe this distinction, and to be careful not to undermine more central aspects of freedom of expression.

[*signed*] Mr. Gerald L. Neuman

[Done 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.]

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<sup>6</sup> It also includes the right to read works by authors who are no longer living.