



**International Covenant on
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Human Rights Committee

Communications Nos. 1914, 1915 and 1916/2009

**Views adopted by the Committee at its 104th session,
12 to 30 March 2012**

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| <i>Submitted by:</i> | Saida Musaeva (not represented by counsel) |
| <i>Alleged victim:</i> | Erkin Musaev (the author's son) |
| <i>State party:</i> | Uzbekistan |
| <i>Date of communications:</i> | 18 January 2008 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's rule 97 decision, transmitted to the State party on 17 November 2009 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 21 March 2012 |
| <i>Subject matter:</i> | Failure to promptly bring a person detained on a criminal charge before a judge and to adequately address torture allegations; proceedings in violation of fair trial guarantees. |
| <i>Procedural issues:</i> | Non-substantiation of claims |
| <i>Substantive issues:</i> | Arbitrary arrest and detention; right to be brought promptly before a judge; right to adequate time and facilities for the preparation of defence; right to legal assistance. |
| <i>Articles of the Covenant:</i> | 7; 9, paragraph 3; 14, paragraphs 3 (b), (d), (e) and (g) |
| <i>Articles of the Optional Protocol:</i> | 2 |

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 (104th session)

concerning

Communications Nos. 1914, 1915 and 1916/2009*

Submitted by: Saida Musaeva (not represented by counsel)

Alleged victim: Erkin Musaev, the author's son

State party: Uzbekistan

Date of communications: 18 January 2008 (initial submission)

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

Meeting on 21 March 2012,

Having concluded its consideration of communications Nos. 1914, 1915 and 1916/2009, submitted to the Human Rights Committee by Mrs. Saida Musaeva, 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 communications and the State party,

Adopts the following:

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

1.1 The author of the communications is Mrs. Saida Musaeva, an Uzbek national born in 1944. She claims that her son, Mr. Erkin Musaev, an Uzbek national born in 1967, currently serving a 20-year prison term in Uzbekistan, is a victim of violation by Uzbekistan of his rights under articles 7; 9, paragraph 3; 11; 14, paragraphs 1, 3 (b), (d), (e), and (g), and 5; and 15, of the International Covenant on Civil and Political Rights. The author is unrepresented by counsel. The Covenant and the Optional Protocol entered into force for the State party on 28 December 1995.

1.2 On 21 March 2012, pursuant to rule 94, paragraph 2, of its rules of procedure, the Committee decided to examine the three communications jointly.

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval. The text of an individual opinion by Committee members Mr. Fabián Omar Salvioli and Mr. Rafael Rivas Posada is appended to the text of the present Views.

Factual background

2.1 Mr. Erkin Musaev had worked at the Ministry of Defence of Uzbekistan, in various positions since 1993. He resigned in 2004, and started working as a project manager for the Tashkent office of the United Nations Development Programme (UNDP), on the joint European Union-UNDP Programmes for assistance with strengthening borders and drug control in Central Asia – the Border Management Programme in Central Asia (BOMCA) and the Central Asia Drug Action Programme (CADAP).

First trial

2.2 On 31 January 2006, Mr. Musaev was arrested at Tashkent airport, on his way to Bishkek, Kyrgyzstan, to participate in a regional conference there. During a check, border guards claimed that they had discovered in his luggage a computer disk containing classified information. According to the author, the disk in question was not seized in compliance with criminal procedure law, and there was no check to ascertain whether her son's fingerprints were on it. The author's son consistently claimed that the disk did not belong to him but was placed in his suitcase by the officials, as the luggage remained unaccompanied for a period of time during the check.

2.3 Mr. Musaev spent the night of 31 January 2006 in the Operative Department of the Ministry of National Security, and was interrogated there in the absence of a lawyer. On 1 February 2006, he was placed in the Pre-trial Investigation Detention Centre of the National Security Service. On 2 February 2006, his arrest was sanctioned by a Military Prosecutor who visited the Pre-trial Detention Centre. The same day, Mr. Musaev was charged and on 30 May 2006, his criminal case was brought to court. On 13 June 2006, the Military Court of Uzbekistan found him guilty and sentenced him to a 15-year prison term under article 157 (Planning or preparation of aggressive war or engagement in conspiracy in order to execute the said actions), 301 (Abuse of Power, Stretch of Power or Administrative Dereliction), 162 (disclosure of State secrets), and 302 (Neglect to [Military] Service), of the Criminal Code.

2.4 The author claims that while in detention at the premises of the National Security Service, investigators first subjected her son to psychological pressure in an attempt to force him to confess guilt. When he complained about this in two letters addressed to the Chairperson of the National Security Service (exact dates not provided), the investigators used physical coercion and he confessed. Mr. Musaev's family was not aware of his detention for 10 days. When they learned of the arrest, Mr. Musaev's parents wrote to the Chairperson of the National Security Service, requesting authorization to see their son, but the request was rejected, apparently in order not to obstruct the ongoing investigation of a serious criminal case. According to the author, they were denied the right to meet with their son because he had been subjected to psychological and physical pressure and they would thus have been in a position to witness the signs of ill-treatment.

2.5 The author claims that Mr. Musaev's criminal proceedings did not comply with the requirements of a fair trial: he was arrested because the authorities placed a disk containing classified information in his luggage, thereby falsifying evidence. During his unlawful arrest and detention, he was not represented by a lawyer, and, under torture, he was forced to confess guilt. Subsequently, his contact with his lawyer was unduly limited. At the end of the preliminary investigation, he was given only one day to acquaint himself with the charges against him and the criminal case file content, despite the requirements of the Criminal Procedure Code to give an accused person at least three days to study his/her case file before the beginning of a trial.

2.6 The author also claims that in establishing her son's guilt, the courts referred to evidence which was not on file. In particular, Mr. Musaev was found guilty of having orally

provided a representative of a foreign State with classified information from official documents of the Apparatus of the National Security Council within the Presidency of Uzbekistan. However, according to the author, the documents in question were not part of the criminal case file and were not disclosed as they contained written instructions by the Minister of Defence, ordering Mr. Musaev to draw their contents to the attention of their foreign counterparts. If the documents had had to be disclosed in court, it would have become clear that the information he provided to foreign nationals was imparted in the context of his professional duties.

2.7 On 19 June 2006, Mr. Musaev wrote to the Military Court requesting to be allowed to meet with his lawyer to prepare his appeal. His request remained unanswered and he was thus prevented from preparing his appeal. He subsequently wrote to the Military Court several times requesting to be given an opportunity to study the content of the trial transcript, without receiving an answer. Only on 8 October 2007, i.e. more than one year after the judgment of first instance, Mr. Musaev was allowed to familiarize himself with the content of the trial transcript, and only then was he able to submit an appeal (no exact date is provided) against his conviction.

2.8 The author explains that on an unspecified date, the appeal body of the Military Court dismissed the author's son's and his lawyer's appeals and confirmed the conviction and sentence of 13 June 2006. Neither Mr. Musaev nor his lawyer was ever supplied with a copy of the appeal judgement.

2.9 In November 2007, Mr. Musaev filed a supervisory review request with the Supreme Court of Uzbekistan, which, according to the author, remained unexamined. He complained on several occasions to the Supreme Court and the General Prosecutor's Office, claiming violations of his procedural rights during both the preliminary investigation and the court trial, but received no answer. He also complained to the United Nations Working Group on Arbitrary Detention.¹

Second trial

2.10 On 13 July 2006, in a separate trial, Mr. Musaev was found guilty of fraud under article 168 of the Criminal Code by the Tashkent City Court, and was sentenced to six years' imprisonment, together with two other persons, Mr. I and Mr. K., who were each sentenced to three years' imprisonment and heavy fines. Mr. Musaev's final sentence, aggregated with his previous sentence of 13 June 2006, was a 16-year prison term. On 10 July 2007, on appeal, the appeal body of the Tashkent City Court confirmed the sentence. Mr. Musaev was found guilty of fraud, committed in a group with Mr. I. and Mr., K. (representing a foreign business company without the necessary authorizations to act in Uzbekistan) in the context of a tender organized by UNDP for the supply of specially trained dogs for Uzbek Customs in 2005.

2.11 The group was found to have unlawfully taken possession of US\$25,286 out of a total of EUR 95,775 provided by UNDP for the acquisition of the dogs, by committing fraud against the official winner of the tender, a private firm named Tabiat. On an unspecified date, the director of Tabiat complained to the Prosecutor's Office, claiming irregularities in the execution of the terms of the tender. On this ground, on 12 January 2006, the Prosecutor's Office opened a criminal investigation. On 14 February 2006, i.e. when he was in pre-trial detention for the first criminal case against him, Mr. Musaev was

¹On 9 May 2008, the Working Group on Arbitrary Detention adopted opinion No. 14/2008, finding that Mr. Musaev's detention was arbitrary and in violation of his rights under articles 9 and 10 of the Universal Declaration of Human Rights and under articles 9 and 14 of the International Covenant on Civil and Political Rights.

informed of the content of an arrest warrant against him by the Tashkent City Prosecutor. The author claims that the case should not have been examined under criminal law, but under civil law, as in substance it concerned a dispute between two business entities.

2.12 In the context of this second set of criminal proceedings, the author claims, without providing further explanation, that her son was again subjected to torture and psychological and physical pressure to force him to confess guilt. She also claims that his arrest was ordered by a prosecutor and not by a court. His right to defence was also violated, as he was not represented by a lawyer during the preliminary investigation, and he was not able to acquaint himself with the content of the criminal case file before the beginning of the court trial. In addition, the court refused to call additional witnesses on Mr. Musaev's behalf.

Third trial

2.13 In a third trial, Mr. Musaev was found guilty by the Military Court of Uzbekistan on 21 September 2007 of State treason (article 157 of the Criminal Code), in particular for having repeatedly transmitted or facilitated the transmittal of secret information to foreign military officials, and was sentenced to a 20-year prison term, aggregated to his previous sentences. On 11 October 2007, the sentence was confirmed on appeal by the appeal body of the Military Court. The author claims that neither her son nor his lawyers were provided with the decision of 21 September 2007, which prevented them from preparing a proper appeal. The author also claims that in the context of this criminal case, on 2 March 2007, her son was transferred from the penitentiary centre where he was serving his previous sentence, to the Pre-trial Detention Centre of the Ministry of National Security and was kept there until 5 June 2007. He was only able to meet with his lawyer on 15 May 2007, despite repeated complaints, and he could not meet with his lawyer in private. During this period of time, he was not officially informed of the decision to prosecute him, despite his requests for information thereon. Mr. Musaev was provided with the indictment document only on 17 September 2007, i.e. during the court trial, and after numerous complaints.

2.14 The author claims that by use of unlawful methods of interrogation, psychological and physical pressure, the investigators were attempting to force her son to provide false testimony against three other individuals prosecuted for espionage. The author claims that her son's complaints in this regard were ignored by the court. She submits in particular a copy of her son's lawyer's final plea to the court (undated), in which the lawyer refers to evidence contained on file, pursuant to which Mr. Musaev, when in detention on the premises of the National Security Service, suffered a traumatic brain injury, serious enough for him to receive medical treatment from a surgeon in a hospital in Tashkent.

2.15 She further claims that her son was allowed to consult his indictment document only during the court trial, in violation of the three-day requirement under the Criminal Procedure Code. The court also rejected a number of requests by Mr. Musaev to call and question additional witnesses.

2.16 From the documents on file submitted by the author, it transpires that Mr. Musaev was accused of having, in the course of his activities concerning the joint European Union-UNDP Border Management and Drug Action Programmes in Central Asia (BOMCA and CADAP), facilitated the recruitment of Uzbek border guard officers on behalf of a foreign State with the aim of spying, having been himself recruited, in 2005, by a foreign undercover military agent. The author contends that this accusation is groundless, since the foreign citizen in question arrived in Uzbekistan only in 2006: she provides an attestation to this effect issued by the embassy of the foreign State in question in Tashkent. Mr. Musaev's two co-accused in the case testified that they, together with the author's son, met the military agent at the UNDP premises in February 2005, and this was reportedly accepted by the courts. However, according to an attestation issued by UNDP, only Mr. Musaev of the three was listed as a visitor at the United Nations premises from February to May 2005.

This, according to the author, demonstrates that her son's accusation was based only on assumptions.

2.17 The author further contests the legality and the conclusions of an expert commission which has studied the level of the classified information which Mr. Musaev was accused of having provided to the foreign national. Mr. Musaev was not informed that an expert commission had been ordered to study documents, and was unable to question the methodology, call for recusal of experts, challenge the conclusions, etc. According to the author, a witness has confirmed in court that a number of experts have been put under pressure to sign the Commission's conclusions. Mr. Musaev's request in court to call for an additional expert examination thereon was rejected by the court without explanation.

The complaint

3. The author claims that the above-mentioned facts amount to a violation of her son's rights under articles 7; 9, paragraph 3; 11; and 14, paragraphs 1, and 3 (b), (d), (e) and (g); article 14, paragraph 5; and article 15; of the International Covenant on Civil and Political Rights.

State party's observations on admissibility and merits

4.1 By Note Verbale of 11 January 2010, the State party provided its comments on the admissibility and merits of the case. It recalls the facts of the case, noting first that Mr. Musaev was found guilty of State treason, preparation or attempt to disclose State secrets, abuse of power by an official causing significant damage to Military interests, careless attitude concerning the service, and fraud in a particularly significant amount, by the Military Court of Uzbekistan (on 13 June 2006 and 21 September 2007) and the Tashkent City Court on 13 July 2006. He was finally sentenced to a combined 20-year prison term. On 11 October 2007, the Supreme Court confirmed the sentence of 21 September 2007.

4.2 The State party reports that as from 3 August 2006, Mr. Musaev has been held in the UYa 64/21 penitentiary institution in Bekabad City, where he is recorded as suffering from chronic bronchitis and chronic pyelonephritis, although his overall health status is satisfactory. At that time, Mr. Musaev had received 10 short and 8 long visits from his relatives, as well as two visits by his lawyers.

4.3 According to the State party, the author's allegations concerning the use of unlawful methods of investigation against her son and concerning violations of the criminal procedure legislation during the examination of his cases have not been confirmed. The Supreme Court of Uzbekistan has found all court decisions concerning Mr. Musaev to be lawful and grounded.

4.4 The State party further notes that during his stay in prison, Mr. Musaev has been subjected to disciplinary sanctions for having breached the penitentiary regime. No physical or psychological pressure against Mr. Musaev has been permitted by the penitentiary authorities during his stay in prison.

Author's comments on the State party's submission

5.1 On 5 March 2010, the author presented her comments on the State party's observations. She notes first that the State party did not provide any reply as to the merits of her claims, inter alia concerning the failure of the courts to question additional witnesses or to conduct additional expert examination. According to the author, the Military Court's decision of 21 September 2007 was based mainly on the initial testimonies of two officials of the Committee on the Protection of the State Borders (CPSB) – also sentenced for espionage in the third trial of Mr. Musaev – who had stated that they had been present during a meeting between Mr. Musaev and a foreign official, held at the United Nations

premises in March 2005. According to the author, the officials in question subsequently confirmed, in a cassation appeal complaint filed in 2009, that, at the time, they had been forced to give false testimony against Mr. Musaev. The author reiterates that UNDP confirmed in a letter of 17 September 2007 that neither the two CPSB officials nor the foreign national in question visited its premises during the period in question.

5.2 The author adds that she has continued to complain to different institutions about the violations of her son's rights, without success. She has also complained to the President, asking to have her son re-tried, but her letter remained unanswered.

Additional information by the State party

6.1 On 14 June 2011, the State party provided additional information. It explains that the content of the present communication has been carefully examined by its competent authorities, which have concluded that the author's allegations are groundless.

6.2 The State party points out that Mr. Musaev was found guilty of fraud in a particularly large amount (art. 168 of the Criminal Code) on 13 July 2006, by the Tashkent City Court, and the sentence was confirmed on appeal, by the appeal body of the same court, on 10 July 2007. Given that Mr. Musaev had already been found guilty by the Military Court on 13 June 2006 on counts of State treason, abuse of power, preparation of and attempt to commit a crime, disclosure of State secrets, and careless attitude concerning the service, and was sentenced to a 15-year prison term, the Tashkent City Court determined an aggregated sentence of 16 years' imprisonment for the totality of the crimes committed. Mr. Musaev was also declared jointly responsible with his two accomplices for the payment of 12,250,000 Uzbek sums² as damages for the prejudice suffered by one Ms. Kh. (the director of the Tabiat company).

6.3 According to the decision of the Tashkent City Court, in 2005, Mr. Musaev was working as a Programme Manager with UNDP on programmes for strengthening the State borders in Central Asia. The Court concluded that he and his co-accused had conspired together. His two co-accused, Mr. I. and Mr. K. - representatives of a foreign-registered commercial firm (FDN Holding) which did not have the necessary authorizations to act in Uzbekistan - concluded trade agreements on with the UNDP Office. Under cover of these agreements, the three individuals unlawfully cashed US\$25,286, and took possession of a further US\$3,000 belonging to Ms. Kh., manager of Tabiat. The three accomplices acted as a criminal group, with clearly defined roles. Mr. Musaev was looking for individuals and companies whose belongings were subsequently fraudulently misappropriated by the group, and Mr. I. and Mr. K. specifically misled the said individuals and firms, making them sign forged documents.

6.4 According to the State party, Mr. Musaev's guilt in connection with the criminal acts concerned was proven by the testimonies of the injured party Mrs. Kh., the witnesses Mrs. K.; Mrs. M.; Mrs. V.; and Mrs. A; the records of interviews with the co-accused; the conclusions of expert examinations; and other evidence on file, all of which were duly assessed in court.

6.5 The author's allegations concerning violations of Mr. Musaev's criminal procedure rights during the preliminary investigation are, according to the State party, groundless. These allegations have been thoroughly examined in court and duly rejected, as it was found that they were in contradiction with the evidence retained by the court, and, in addition, the first-instance court conducted a full assessment of all evidence on file as

² Equivalent to around US\$10,000 at the material time.

collected by the investigators and transmitted to the court. According to the State party, no violation of Mr. Musaev's criminal procedure rights was committed during the court trial.

Additional comments by the author

7. On 22 August 2011, the author noted that, in her opinion, the State party provided no information on the merits of the communication. As to the State party's reference to a number of testimonies which served as a basis for establishing Mr. Musaev's guilt, the author contends that the testimonies in question in fact contained no reference to possibly unlawful activities of her son. The fact that the court listed these testimonies in establishing her son's guilt shows, according to the author, that the trial was biased and held in an accusatory manner. The author claims that a technical expert's examination of 9 March 2006 was conducted in the absence of her son or his lawyers, and Mr. Musaev was not informed of the outcome of the examination, and therefore the examination in question should have been deemed inadmissible.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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. The Committee has taken note that a similar complaint was submitted on behalf of Mr. Musaev to the United Nations Working Group on Arbitrary Detention, which concluded, on 9 May 2008, by Opinion No. 14/2008, that inter alia, Mr. Musaev's rights under articles 9 and 14 of the Covenant have been violated. Preliminarily, and without prejudice to the issue of whether the United Nations Working Group on Arbitrary Detention constitutes ~~another~~ "another procedure of international investigation or settlement" for purposes of admissibility, the Committee notes that, in any event, the ~~same~~ "same matter" is no longer ~~being~~ "being examined" by this body. Therefore, in the absence of any reservation by the State party under article 5, paragraph 2 (a), of the Optional Protocol, the Committee concludes that it is not precluded by this provision from examining the present communication for purposes of admissibility.

8.3 Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the author contends that available domestic remedies have been exhausted, and that this was not contested by the State party.

8.4 The Committee notes the author's claim concerning the second trial of her son, that his rights under articles 11 and 15 of the Covenant were violated, since the authorities opened a criminal case for fraud although the case related to a commercial dispute between two economic entities and parties to a trade agreement, which should be regulated by civil law. The Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

8.5 The Committee also notes the author's numerous claims relating to the manner in which her son's three criminal proceedings have been conducted by the investigation authorities and courts, showing, according to her, a violation of certain of his rights under article 14, paragraph 1, of the Covenant. The Committee has noted that the State party has not refuted these allegations specifically, but has stated in general terms that no violation of the criminal procedural rights of the author's son had occurred either at the stage of the

preliminary investigation or during the court trial. The Committee observes that in substance, these complaints relate to the manner in which the State party's courts and authorities have evaluated facts and evidence and applied the law. The Committee recalls its jurisprudence, according to which it is incumbent upon the courts of States parties to evaluate the facts and evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.³ Having taken due note of all information and materials before it, the Committee is of the opinion that it is not in a position to conclude that in this case the court proceedings suffered from such defects. The Committee thus considers that the author has failed to provide sufficient substantiation for her claims of a violation of Mr. Musaev's rights under article 14, paragraph 1, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8.6 The Committee has further noted that the author claimed, in general terms and without providing sufficient details, that in violation of her son's rights under article 14, paragraph 3 (e), of the Covenant, a number of requests made in court to have additional witnesses questioned were unduly rejected and that the court has refused to order the conduct of a new expert examination on at least one occasion. In the absence of more specific information, explanations, or documentation on file, in particular as to the significance of any additional witness statements, with a view to establishing the objective truth in the criminal cases against Mr. Musaev, and on the exact grounds provided by the court when dealing with the issue of an additional expert examination, the Committee considers that this part of the communication is insufficiently substantiated for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

8.7 As far as the remaining claims are concerned, the Committee considers that they are admissible, as raising issues under article 7; article 9; and article 14, paragraphs 3 (b), 3 (d), 3 (g) and 5, of the Covenant.

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 required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's claims that during the preliminary investigations in the first and second cases against him, in the absence of a lawyer, her son has been subjected to torture, and put under psychological and physical pressure, to the point that he confessed guilt in relation to the criminal acts concerned. She also claims, in particular, that in the context of the third criminal case, her son suffered a brain injury (see paragraph 2.14 above) during an interrogation, when the investigators tried to force him to make statements incriminating his two co-accused, and that he had to undergo a surgical operation in a hospital in Tashkent. The author has also claimed that her son and his lawyers have complained about the forced confessions obtained under duress, including in court, but their claims were ignored. The Committee further notes that the State party has not refuted these allegations specifically, but has merely stated that no violation of Mr. Musaev's criminal procedural rights had occurred in the case. In the absence of any thorough explanation from the State party regarding the investigation into the torture allegations, the Committee has to give due weight to the author's allegations. In these circumstances, the Committee considers that the State party's competent authorities did not give due and adequate consideration to Mr. Musaev's complaints of torture and forced confessions made both

³ See, inter alia, *Simms v Jamaica*, communication No 541/1993, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

during the pre-trial investigation and in court. Accordingly, the Committee concludes that the facts before it disclose a violation of Mr. Musaev's rights under articles 7 and 14, paragraph 3 (g), of the Covenant.⁴

9.3 The Committee has also noted the author's claim that her son was never brought before a judge or other officer authorized by law to exercise judicial power in order to verify the legality of his arrests and placement in pre-trial detention, but that the decisions to have him arrested and detained were taken by prosecutors only. The Committee recalls⁵ its established jurisprudence, according to which article 9, paragraph 3, of the Covenant is intended to bring the detention of a person charged with a criminal offence under judicial control and recalls that it is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the present case, the Committee is not satisfied that the public prosecutor may be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. The Committee therefore concludes that there has been a violation of this provision.⁶

9.4 The Committee has noted the author's claim that her son's rights under article 14, paragraph 3 (b), of the Covenant, have been violated, as, after his arrest on 31 January 2006, in the context of his first trial, Mr. Musaev was kept in isolation at the premises of the National Security Service, and was interrogated and forced to confess guilt, in the absence of a lawyer; subsequently, during the pre-trial detention, his contacts with his lawyer were unduly limited. Concerning his second trial, the author claimed that her son's right to defence was also violated, as he was not represented by a lawyer during the preliminary investigation. As to the third trial, the author claims that on 2 March 2007, her son was brought to the Pre-trial Detention Centre of the National Security Service and was kept and interrogated there, until 5 June 2007, in the absence of a lawyer. According to the author, her son met with his lawyer only on 15 May 2007, in spite of his repeated requests and never met with his lawyer in private. The Committee notes that the State party has not refuted these allegations specifically but that it has only stated, in general terms, that no violations of criminal procedure occurred in this case. In the circumstances, the Committee considers that due weight must be given to the author's allegations. Accordingly, the Committee considers that in the circumstances of the present case, the facts as presented by the author amount to a violation of Mr. Musaev's rights under article 14, paragraph 3 (b), of the Covenant. In light of these conclusions, the Committee decides not to separately examine the author's claim under article 14, paragraph 3 (d), of the Covenant.

9.5 The Committee has further noted the author's claim that her son was not provided with the judgment of the Military Court of 21 September 2007 (in his third trial), and thus was prevented from effectively presenting an appeal against it. It has also noted that the State party has not refuted this allegation specifically. In the circumstances, the Committee decides that due weight must be given to the author's allegations. The Committee recalls that the right to have one's conviction reviewed can only be exercised effectively if the

⁴ See, for example, Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (article 14), para. 60, and communication No. 1401/2005, *Kirpo v. Tajikistan*, Views adopted on 27 October 2009, para. 6.3.

⁵ See, for example, *S. and M. Bazarov v. Uzbekistan*, communication No. 959/2000, Views adopted on 14 July 2006, para. 8.2.

⁶ See, *inter alia*, communication No. 959/2000, *S. and M. Bazarov v. Uzbekistan*, Views of 8 August 2006, para. 8.2; communication No. 1449/2006, *Umarov v. Uzbekistan*, Views adopted on 19 October 2010, para. 8.6. The Committee takes note of the fact that the State party has changed its system, and as of January 2008, a system of judicial review over arrests and pre-trial detention is in place.

convicted person is entitled to have access to a duly reasoned, written judgement of the trial court, and at least in the court of first appeal where domestic law provides for several instances of appeal.⁷ In the circumstances of the present case, the Committee concludes that the State party's failure to provide the author's son with the judgement of the Military Court of 21 September 2007 amounts to a violation of Mr. Musaev's rights under article 14, paragraph 5, of the Covenant.

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 State party has violated article 7; article 9; and article 14, paragraphs 3 (b), 3 (g) and 5, of the International Covenant on Civil and Political Rights.

11. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the State party is under an obligation to provide Mr. Musaev with an effective remedy, including: carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible; either his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the victim with full reparation, including appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

12. Bearing in mind that, by becoming a State 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 and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views, to translate them into the official language, in an accessible format, and to widely disseminate them.

[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.]

⁷ See, for example, the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (art. 14), para. 49.

Appendix

Joint opinion by Committee members Mr. Fabián Omar Salvioli and Mr. Rafael Rivas Posada (partially dissenting)

1. In general, we concur with the Committee's conclusions regarding communications No. 1914, 1915 and 1916/2009, *Musaev v. Uzbekistan*. However, we wish to place on record our disagreement regarding the scope of military jurisdiction within the framework of the International Covenant on Civil and Political Rights.

2. We wish to highlight the need to review the current position of the Committee, which considers the trial of civilians in military courts to be compatible with the Covenant. This position is based on a paragraph contained in general comment No. 32, which has attracted criticism in a number of minority opinions regarding individual cases previously considered by the Committee.⁸

3. A close reading of article 14 would indicate that the Covenant does not even go so far as to suggest that military justice might be applied to civilians. Article 14, which guarantees the right to justice and due process, does not contain a single reference to military courts. On numerous occasions — and always with negative consequences as far as human rights are concerned — States have empowered military courts to try civilians, but the Covenant is completely silent on the subject.

4. It is true that the Covenant does not prohibit military jurisdiction, nor is it our intention here to call for its abolition. However, the jurisdiction of the military criminal justice system constitutes an exception which should be contained within suitable limits if it is to be fully compatible with the Covenant: *ratione personae*, military courts should try active military personnel, never civilians or retired military personnel; and *ratione materiae*, military courts should never have jurisdiction to hear cases involving alleged human rights violations. Only under these conditions can the application of military justice, in our opinion, be considered compatible with the Covenant.

[Done in English, French and Spanish, the Spanish 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.]

⁸ Human Rights Committee: communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*; Views adopted on 26 July 2010, separate opinion of Mr. Fabián Salvioli, paras. 1-15; Human Rights Committee: communication No. 1813/2008, *Akwanga v. Cameroon*; Views adopted on 22 March 2011, separate opinion of Mr. Fabián Salvioli, paras. 1-14.