



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fourth session  
13 – 31 October 2008

**VIEWS**

**Communications Nos. 1263/2004 and 1264/2004**

<u>Submitted by:</u>	Mrs. Saybibi Khuseynova (1263/2004) and Mrs. Pardakhon Butaeva (1264/2004) (not represented by counsel)
<u>Alleged victims:</u>	Messrs. Ibrokhim Khuseynov (Saybibi Khuseynova's son) and Todzhiddin Butaev (Pardakhon Butaeva's son)
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	5 March 2004 (Khuseynova) and 10 March 2004 (Butaeva) (initial submissions)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decisions, transmitted to the State party on 9 March 2004 (1263/2004) and 11 March 2004 (1264/2004) (not issued in document form)
<u>Date of adoption of Views:</u>	20 October 2008

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

*Subject matter:* Imposition of death penalty on complainants after arbitrary detention and use of coerced evidence.

*Substantive issues:* Right to life; torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; fair hearing; impartial tribunal; right to be presumed innocent; right to adequate time and facilities for preparation of defence; right not to be compelled to testify against oneself or to confess guilt.

*Procedural issues:* Non-substantiation of claims, non-exhaustion of domestic remedies.

*Articles of the Covenant:* 6, read together with 14; 7; 9, paragraph 1; 14, paragraphs 1, 3(b),(e) & (g)

*Article of the Optional Protocol:* 2

The Working Group of the Human Rights Committee recommends that the Committee consider for adoption the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communications Nos. 1263/2004 and 1264/2004. The text of the Views is appended to the present document.

[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-fourth session

concerning

**Communications Nos. 1263/2004 and 1264/2004\***

<u>Submitted by:</u>	Mrs. Saybibi Khuseynova (1263/2004) and Mrs. Pardakhon Butaeva (1264/2004) (not represented by counsel)
<u>Alleged victims:</u>	Messrs. Ibromhim Khuseynov (Saybibi Khuseynova's son) and Todzhiddin Butaev (Pardakhon Butaeva's son)
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	5 March 2004 (Khuseynova) and 10 March 2004 (Butaeva) (initial submissions)

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

Meeting on 20 October 2008,

Having concluded its consideration of communications Nos. 1263/2004 and 1264/2004, submitted to the Human Rights Committee on behalf of Messrs. Ibromhim Khuseynov and Todzhiddin Butaev 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 authors of the communications, and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

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

1.1 The first author is Mrs. Saybibi Khuseynova, a Tajik national born in 1952, who submits the communication on behalf of her son, Mr. Ibrokhim Khuseynov, an Uzbek<sup>1</sup> national born in 1972. The second author is Mrs. Pardakhon Butaeva, a Tajik national born in 1939, who submits the communication on behalf of her son, Mr. Todzhiddin Butaev, a Tajik national born in 1977. At the time of submission of the communications, both victims were detained on death row in Dushanbe, awaiting execution after a death sentence imposed by the Judicial Chamber for Criminal Cases of the Supreme Court on 24 February 2003. The authors claim violations by Tajikistan of the alleged victims' rights under article 6, read together with article 14; article 7; article 9, paragraph 1; article 14, paragraphs 1, 3(b) and 3(g), of the International Covenant on Civil and Political Rights. Mrs. Butaeva also claims a violation of article 14, paragraph 3(e), in her son's case. The authors are unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on 9 March 2004 (Khuseynov) and on 11 March 2004 (Butaev), not to carry out the execution of the authors' sons, so as to enable the Committee to examine their complaints. This request was reiterated by the Committee on 26 April 2004. By note of 20 May 2004, the State party informed the Committee that it acceded to the request for interim measures and that, on 30 April 2004, the President of Tajikistan announced the introduction of a moratorium on the application of death penalty. On 11 June 2004, the Committee lifted its request for interim measures.

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

2.1 Towards the end of 1997,<sup>2</sup> one Rakhmon Sanginov, created a criminal gang, which began to commit robberies, murders and to take hostages. By force and using death threats, he coerced young men from the district where his gang was operating to join the gang and to commit crimes. Among many others, Messrs Khuseynov and Butaev were thus forced to become members of Mr. Sanginov's gang.

#### ***The Case of Mr. Ibrokhim Khuseynov***

2.2 On 26 June 2001, Mr. Khuseynov was apprehended by officers of the Criminal Investigation Department (CID) of the Department of Internal Affairs of the Somoni District of Dushanbe (DIA). For two days, he was detained in DIA premises and subjected to beatings with truncheons and electric shocks to various body parts. He was forced to testify against himself and to confess to having committed a number of crimes, including murders and robberies.

2.3 On 28 June 2001, Mr. Khuseynov was interrogated by the Deputy Head of the DIA's Investigation Section. The same day, he was interrogated as a suspect by an officer of the Ministry of Internal Affairs. On the same day, a protocol of Mr. Khuseynov's arrest of short

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<sup>1</sup> Initial submission refers to 'nationality' (*национальность*), which could be translated from Russian into English both as 'ethnic origin' and 'citizenship'.

<sup>2</sup> According to the court documents, the date should be 1994.

duration was drawn up, and he was placed into temporary confinement (IVS). He did not have access to a lawyer, and his rights were not explained to him.<sup>3</sup>

2.4 Twenty-two days after being placed into IVS custody, Mr. Khuseynov was scheduled to be transferred to the investigation detention centre (SIZO). The SIZO officers, however, refused to accept him because of numerous bruises and injuries visible on his body. Finally, he was transferred to the SIZO on 30 July 2001, after his health condition had been attested by a medical certificate.<sup>4</sup> Mrs. Khuseynova claims that under IVS regulations, a detained person is to be transferred from the IVS to the SIZO as soon as an arrest warrant is served on him. In exceptional cases and with the prosecutor's approval, a detained person can be kept in the IVS up to ten days. Mr. Khuseynov was detained at the IVS for a total of thirty two days (from 28 June 2001 to 30 July 2001).

2.5 His arrest warrant was issued on 30 June 2001 by the Deputy General Prosecutor of Tajikistan. It referred to the organisation of an illegal armed group (article 185, part 2, of the Criminal Code) and murder with aggravating circumstances (article 104, part 2).

2.6 On 8 July 2001, Mr. Khuseynov was formally charged with banditry (article 186, part 2, of the Criminal Code) and murder with aggravating circumstances (article 104, part 2). During the subsequent interrogation as an accused, he was unrepresented. When the interrogation ended, an investigator invited in a lawyer, one Tabarov, who signed the interrogation protocol, although Mr. Khuseynov had never seen this lawyer before and was unaware that he had been assigned to him. There was no document issued in Mr. Tabarov's name in the criminal case file and this lawyer participated in no more than two investigative actions after Mr. Khuseynov was charged.

2.7 According to Mrs. Khuseynova, the investigators had planned the verification of her son's confession at the crime scene in advance. Some days before the actual verification, her son was brought to the crime scene, and it was explained to him where he should stand and what to say. The actual verification was video-taped, and was twice carried out in the absence of a lawyer.

2.8 On 28 August 2001, Mr. Khuseynov was granted access to a lawyer of his choice, one Ibrokhimov, who was retained by the family. Mr. Ibrokhimov, however, was not informed about any of the investigative actions carried out in relation to his client; he could not meet Mr. Khuseynov and prepare his defence.

2.9 The trial of Mr. Khuseynov by the Judicial Chamber for Criminal Cases of the Supreme Court took place from 3 May 2002 to 24 February 2003. Mrs. Khuseynova claims that her son's trial was unfair and that the court was partial. Thus:

- a) Mr. Khuseynov retracted his confessions obtained under duress during the pre-trial investigation in court. He affirmed that the law enforcement officers used unlawful methods during the interrogations and forced him to testify against himself. Mr. Khuseynov's testimony was allegedly ignored by the presiding judge and omitted from

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<sup>3</sup> Reference is made to article 19 of the Tajik Constitution: "Every person is entitled to legal assistance from the moment of his arrest" and article 53 of the Criminal Procedure Code: "Every suspect has the right to defence".

<sup>4</sup> No further details provided.

the trial transcript. Subsequently, Mr. Khuseynov and his lawyer submitted to the judge a transcript of Mr. Khuseynov's testimony not included in the trial transcript. The court took note of these omissions but did not take them into account when passing the death sentence.

b) Mr. Khuseynov was sentenced to death exclusively on the basis of his own confessions obtained by unlawful methods during the pre-trial investigation.

2.10 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Khuseynov guilty of banditry (article 186, part 2, of the Criminal Code), murder with aggravating circumstances (article 104, part 2) and robbery (article 249, part 4). He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death (under articles 104 and 249). Pursuant to article 67, part 3, of the Criminal Code, Mr. Khuseynov's aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court reduced the sentence pursuant to article 249 of the Criminal Code to 20 years' imprisonment, with seizure of property, and upheld the remaining sentence.

2.11 On 24 May 2004, the first author indicated that the death penalty was not the only punishment that could have been imposed under article 104, part 2, of the Criminal Code, as the latter also envisages a sentence of between 15 to 20 years' imprisonment. Under article 18, paragraph 5, of the Criminal Code, murder with aggravating circumstances is qualified as a particularly serious crime. The lawfulness of Mr. Khuseynov's detention was determined by the prosecutor who issued his arrest warrant.

2.12 On an unspecified date, a request for pardon on behalf of Mr. Khuseynov was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

### ***Case of Mr. Todzhiddin Butaev***

2.13 From May to September 1997, Mr. Butaev performed his military service in a military unit under the command of one 'Khochi-Ali', subordinated to Mr. Sanginov (see paragraph 2.1 above). When Mr. Butaev learned that this military unit operated outside the law, he left the unit. In February 1998, the commander of another illegal squadron also subordinated to Mr. Sanginov, forced Mr. Butaev to become a member of his organisation, which was implicated in murders and robberies. In September 1998, Mr. Butaev deserted.

2.14 At around 5 a.m. on 4 June 2001, Mr. Butaev was apprehended by law-enforcement officers at his home and taken away. His mother was not given any explanation and was not informed about her son's whereabouts. On 10 June 2001, she visited the Ministry of Security, where she was told that her son was detained on the Ministry of Security premises and was suspected of having committed particularly serious crimes. While detained in the Ministry of Security, Mr. Butaev was interrogated daily, subjected to beatings with truncheons, application of electric shocks and forced to testify against himself.

2.15 On 14 July 2001, legal proceedings were instituted against him. The same day, he was interrogated as a suspect by an investigator of the Ministry of Security, in the absence of a lawyer. On the same day, a protocol of Mr. Butaev's arrest of short duration was drawn up, and

he was placed into the IVS. He did not have access to a lawyer, and his rights were not explained to him.<sup>5</sup> On an unspecified date, Mr. Butaev was transferred to SIZO, where he contracted tuberculosis.

2.16 Mr. Butaev's arrest warrant was issued by a prosecutor on 19 July 2001. On 22 July 2001, he was assigned a lawyer and formally charged.<sup>6</sup> The ensuing investigative actions, however, were done in the absence of a lawyer: verification of Mr. Butaev's testimony at the crime scene; and conduct of a confrontation with the victims' relatives.

2.17 The trial of Mr. Butaev before the Judicial Chamber for Criminal Cases of the Supreme Court, together with that of Mr. Khuseynov as co-accused, ended on 24 February 2003. Mrs. Butaeva claims that her son's trial was unfair and that the court was partial. Thus:

- a) No prosecution witnesses identified Mr. Butaev in court as the person who murdered their relatives.
- b) In court, Mr. Butaev retracted his confessions obtained under duress during the pre-trial investigation. He affirmed that the law enforcement officers used unlawful methods during interrogations and forced him to incriminate himself. Mr. Butaev pleaded his innocence, stated that he was not present at the crime scene when the crime was committed, and that that he wrote down his confession according to the investigator's instructions. Mr. Butaev's lawyer drew the court's attention to the fact that his client's confession contradicted the results of a forensic medical examination. Specifically, during the pre-trial investigation, Mr. Butaev admitted to having shot one Alimov, whereas the forensic medical examination of 13 February 1998 established that the cause of the victim's death was 'mechanical asphyxia'. The court disregarded these contradictions when passing its death sentence.
- c) The court dismissed a motion submitted by Mr. Butaev's lawyer to summon and examine in court the investigator, officers of the Ministry of Security who apprehended Mr. Butaev, as well as the forensic expert who made the examination of 13 February 1998.

2.18 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Butaev guilty of banditry (article 186, part 2, of the Criminal Code), murder with aggravating circumstances (article 104, part 2) and robbery (article 249, part 4). He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death (under articles 104 and 249). Pursuant to article 67, part 3, of the Criminal Code, Mr. Butaev aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court reduced Mr. Butaev's pursuant to article 249 of the Criminal Code to 20 years' imprisonment, with seizure of property, and upheld the remaining sentence.

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<sup>5</sup> Reference is made to article 19 of the Tajik Constitution: "Every person is entitled to legal assistance from the moment of his arrest" and article 53 of the Criminal Procedure Code: "Every suspect has the right to defence".

<sup>6</sup> No further details provided.

2.19 On an unspecified date, a request for pardon on behalf of Mr. Butaev was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

## **The complaint**

### ***Case of Mr. Ibrokhim Khuseynov***

3.1 Mrs. Khuseynova claims that her son was subjected to arbitrary arrest. Firstly, under article 412 of the Criminal Procedure Code, a suspect can be subjected to arrest of short duration only on the basis of an arrest protocol. Those apprehended under suspicion of having committed a crime must be detained in the IVS. Mr. Khuseynov, however, was detained on the DIA premises from 26 June 2001 to 28 June 2001, the protocol of his arrest of short duration was drawn up and he was placed into the IVS only 48 hours after he was apprehended. During this time, he was forced to incriminate himself. The arrest warrant was served on him only on 30 June 2001. Mrs. Khuseynova submits that her son's remand in custody from 26 June to 30 June 2001 violated article 9, paragraph 1, of the Covenant.

3.2 Secondly, under article 83 of the Criminal Procedure Code, the prosecutor may, in exceptional cases, apply a restraint measure, such as arrest, before filing formal charges. The Criminal Procedure Code does not specify, however, what should be deemed to be 'exceptional cases'. Mr. Khuseynov's arrest warrant indicates that he was arrested for 'having committed a crime', although he was formally charged only on 8 July 2001. The first author submits that the issuance of an arrest warrant without the formal filing of charges and without justifying the exceptional nature of the arrest, as required by article 83 of the Criminal Procedure Code, is arbitrary. She invokes the Committee's Views in *Mukong v. Cameroon*,<sup>7</sup> where the Committee confirmed that "arbitrariness" was not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In the present case, Mr. Khuseynov was remanded in custody for fifteen days without being formally charged.

3.3 Mrs. Khuseynova submits that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess guilt.

3.4 Mrs. Khuseynova claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial. She adds that her son's rights under article 14, paragraph 3(b), were violated, because he was interrogated as a suspect, on 28 June 2001, in the absence of a lawyer, and because he was granted access to a lawyer only on 8 July 2001. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be represented by a lawyer. Under principle No. 7 of the Basic Principles on the Role

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<sup>7</sup> Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, Views adopted on 21 July 1994, paragraph 9.8.



of Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.<sup>8</sup>

3.5 Finally, Mrs. Khuseynova claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, because the violations of article 14 resulted in an illegal and unfair death sentence, which was pronounced by an incompetent tribunal.

***Case of Mr. Todzhiddin Butaev***

3.6 Mrs. Butaeva claims that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess guilt. During Mr. Butaev's detention in the Ministry of Security (from 4 June to 14 July 2001) and until he was formally charged on 22 July 2001, he was held incommunicado and in isolation from the outside world for 48 days (4 June to 22 July 2001). Mrs. Butaeva refers to the Committee's general comment 20 (44), which recommends that States parties should make provision against incommunicado detention and notes that total isolation of a detained or imprisoned person may amount to acts prohibited by article 7.<sup>9</sup>

3.7 Mrs. Butaeva submits that her son was subjected to arbitrary arrest. He was detained the Ministry of Security from 4 June to 14 July 2001, the protocol of his arrest of short duration was drawn up and he was placed in IVS custody only forty days after he had been apprehended. During this time, he was forced to testify against himself.

3.8 Mrs. Butaeva claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial and conducted the trial in an accusatory manner. Article 14, paragraph 3(e), was violated as the court rejected a motion by Mr. Butaev's lawyer to summon and examine witnesses against his client, as well as the forensic expert who made the examination of 13 February 1998.

3.9 Mrs. Butaeva claims that her son's rights under article 14, paragraph 3(b), were violated, because he was interrogated as a suspect, on 14 June 2001, in the absence of a lawyer, and because he was granted access to a lawyer only on 19 July 2001.<sup>10</sup> Each time when Mr. Butaev requested a lawyer, he was beaten by officers of the Ministry of Security. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be represented by a lawyer. Under principle No. 7 of the Basic Principles on the Role of Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.<sup>11</sup>

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<sup>8</sup> Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

<sup>9</sup> See, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A, general comment 20 (44).

<sup>10</sup> In paragraph 2.16 above, Mrs. Butaeva claims that her son was assigned a lawyer on 22 July 2001.

<sup>11</sup> Supra n.8.

3.10 Finally, Mrs. Butaeva claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, because the violations of article 14 resulted in an illegal and unfair death sentence, which was pronounced by an incompetent tribunal.

#### **State party's observations on admissibility and merits**

4. On 27 July 2004, the State party forwarded information that on 20 July 2004, the President of Tajikistan granted presidential pardons to both Messrs. Khuseynov and Butaev and commuted their death sentences to long term imprisonment. No further details were provided by the State party.

#### **Authors' comments on State party's observations**

5.1 On 13 December 2004, Mrs. Butaeva submitted that in August 2004, she could not deliver a parcel to her son, whom she believed was then still detained on death row. She was told that her son's death sentence had been commuted and that he had been transferred to a detention facility in Kurgan-Tyube. She claims that she was not officially informed by the State party about the commutation of her son's death sentence. On 16 December 2004, Mrs. Khusyenova submitted that she only learnt about the commutation of her son's death sentence from the Committee's letter she received in October 2004.

5.2 Both authors submit that the commutation of their sons' death sentences does not mean that the State party provided adequate redress for the violation of Messrs. Khuseynov's and Butaev's rights. They insist, therefore, on the continuation of the consideration of their communications before the Committee.

#### **Further submissions from the State party**

##### ***Case of Mr. Ibrokhim Khuseynov***

6.1 On 14 April 2006, the State party forwarded a report from the General Prosecutor of Tajikistan dated 28 March 2006 and a letter of First Deputy Chair of the Supreme Court, dated 31 March 2006. In his report, the General Prosecutor recalls the crimes Mr. Khuseynov was found guilty of,<sup>12</sup> and finds that by imposing the punishment, the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Khuseynov's guilt. He concluded that Mr. Khuseynov's sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.2 The First Deputy Chair of the Supreme Court reiterates that Mr. Khuseynov's guilt was proven by his own confession made during both the pre-trial investigation and in court, witness testimonies, the protocols of the verification of testimonies at the crime scene, the conclusion of forensic and ballistic examinations, and other evidence. During the pre-trial investigation and in the presence of a lawyer, Mr. Khuseynov described how he murdered two of the victims and pleaded guilty. Moreover, he committed a number of armed robberies in an armed gang of Mr. Sanginov. He thus concluded that Mr. Khuseynov's sentence was lawful and proportionate.

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<sup>12</sup> The crimes were allegedly committed between 7 August 1994 and 27 June 1999.

***Case of Mr. Todzhiddin Butaev***

6.3 In a report also dated 14 April 2006, the General Prosecutor recalls the crimes Mr. Butaev was found guilty of,<sup>13</sup> and finds that by imposing the punishment, the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Butaev's guilt. He specified that Mrs. Butaeva's allegations that her son's testimony was obtained under torture, that his arrest was not followed by a timely protocol and that he was not promptly assigned a lawyer have not been corroborated. Pre-trial investigation and trial materials indicate that during the pre-trial investigation and in court Mr. Butaev gave his testimony freely, without pressure, and in the presence of his lawyer. The General Prosecutor concludes, therefore, that Mr. Butaev's sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.4 The First Deputy Chairperson of the Supreme Court also by a letter of 31 March 2006, reiterates that Mr. Butaev's guilt was proven by his own confession made during both the pre-trial investigation and in court, the protocols of the verification of testimonies at the crime scene, and the conclusion of forensic examinations. He thus concludes that Mr. Butaev's sentence was lawful and proportionate.

**Issues and proceedings before the Committee****Consideration of admissibility**

7.1 Before considering any claim contained in the communications, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communications are admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party has not contested that domestic remedies have been exhausted in both communications.

7.3 The authors claim that the alleged victims' rights under article 9, paragraphs 1 and 2, were violated, as they were unlawfully arrested and detained for long periods of time without being formally charged. The Committee notes, however, that the material before it does not allow it to establish the exact circumstances of their arrest. It further remains unclear whether these allegations were raised at any time before the domestic courts. In these circumstances, the Committee considers that this part of the communications is not properly substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7.4 The authors claim that in violation of article 14, paragraph 1, their sons' tribunal was partial and biased (paragraphs 2.9, 2.17, 3.4 and 3.8 above). The Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted

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<sup>13</sup> The crimes were allegedly committed between early February 1998 and 18 October 1998.

to a denial of justice.<sup>14</sup> In the present cases, the Committee considers that the authors have not been able sufficiently to show that the trial suffered from such defects. Accordingly, the Committee concludes that the authors have failed sufficiently to substantiate their claims under this provision, and that this part of the communications is accordingly inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers the authors' remaining claims under article 6, read together with article 14; article 7; article 14, paragraphs 3(b) and 3(g), in relation to Messrs. Khuseynov and Butaev; and Mrs. Butaeva's allegation under article 14, paragraph 3 (e), in relation to her son, are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

### *Consideration of the merits*

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

8.2 The authors claim that their sons were beaten and tortured by DIA officers (case of Mr. Khuseynov) and officers of the Ministry of Security (case of Mr. Butaev) to make them confess their guilt, contrary to article 7 and article 14, paragraph 3(g), of the Covenant. They argue that their sons revoked their confessions in court, asserting that they had been extracted under torture; their challenge to the voluntariness of the confessions was dismissed by the court. In the absence of any pertinent explanation on this matter from the State party, due weight must be given to the authors' allegations. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.<sup>15</sup> In this respect, the Committee recalls the authors' fairly detailed description of the treatment to which their sons were subjected. It considers that in these circumstances, the State party failed to demonstrate that its authorities adequately addressed the torture allegations advanced by the authors, nor has it provided copies of any internal investigation materials or medical reports in this respect.

8.3 Furthermore, as regards the claim of a violation of the alleged victims' rights under article 14, paragraph 3 (g), in that they were forced to sign a confession, the Committee must consider the principles that underlie this guarantee. It recalls its jurisprudence that the wording, in article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities of the accused with a view to obtaining a confession of guilt.<sup>16</sup> The Committee recalls that in cases of forced confessions, the burden is on the State to

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<sup>14</sup> See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

<sup>15</sup> See, e.g., Communication No. 781/1997, *Aliiev v. Ukraine*, views adopted on 7 August 2003, paragraph 7.2.

<sup>16</sup> Communication No. 330/1988, *Berry v. Jamaica*, views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004,

prove that statements made by the accused have been given of their own free will.<sup>17</sup> It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.<sup>18</sup> The Committee takes into account that the State party did not provide any arguments corroborated by relevant documentation to refute the authors' claim that their sons were compelled to confess guilt, although the State party had the opportunity to do so, and which the authors have sufficiently substantiated. In these circumstances, the Committee concludes that the facts before it disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

8.4 On the alleged violation of article 14, paragraph 3 (b), in that the authors' sons were not informed of their right to be represented by a lawyer upon arrest, that they were assigned a lawyer only 12 days (Mr. Khuseynov) and 48 days (Mr. Butaev), respectively, after being detained and that most of the investigative actions, particularly during the time when they were subjected to beatings and torture, the Committee again regrets the absence of any relevant explanation by the State party. It recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused must effectively be assisted by a lawyer at all stages of the proceedings.<sup>19</sup> In the present cases, the authors' sons were subject to several charges that carried the death penalty, without any effective legal defence, although a lawyer had been assigned to them by the investigator and, at a later stage, retained by the family (case of Mr. Khuseynov). It remains unclear from the material before the Committee whether Mr. Butaev ever requested a private lawyer, or whether Messrs. Khuseynov and Butaev ever contested the choice of the publicly assigned lawyer; however, and in the absence of any relevant explanation by the State party on this particular issue, the Committee reiterates that steps must be taken to ensure that counsel, once assigned, provides effective representation, in the interests of justice.<sup>20</sup> Accordingly, the Committee is of the view that the facts before it reveal a violation of Messrs. Khuseynov's and Butaev's rights under article 14, paragraph 3 (b), of the Covenant.

8.5 The Committee has noted Mrs. Butaeva's claim that her son's lawyer motioned the court to summon and examine in court witnesses against his client, as well as the forensic expert who made an examination of 13 February 1998, and that the judge denied his motion without providing reasons. The Committee recalls that, as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3(e), is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as

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paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, views adopted on 1 November 2004, paragraph 5.1.

<sup>17</sup> Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 49.

<sup>18</sup> Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3.

<sup>19</sup> See, e.g., *Aliev v. Ukraine*, supra n.15; Communication No. 223/1987, *Robinson v. Jamaica*, Views adopted on 30 March 1989; Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 23 March 1999.

<sup>20</sup> See, *inter alia*, Communication No. 253/1987, *Kelly v. Jamaica*, views adopted on 8 April 1991, paragraph 5.10.

are available to the prosecution.<sup>21</sup> It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within such limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess such evidence.<sup>22</sup> In the present case, the Committee observes that most of the witnesses and the forensic expert requested in the motion submitted by Mr. Butaev's lawyer, which was denied by the court, could have provided information relevant to Mr. Butaev's claim of being forced to confess under torture at the pre-trial investigation. This factor leads the Committee to the conclusion that the State party's courts did not respect the requirement of equality between prosecution and defence in producing evidence and that this amounted to a denial of justice. Consequently, the Committee concludes that Mr. Butaev's right under article 14, paragraph 3(e), was violated.

8.6 The Committee recalls its jurisprudence to the effect that the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant.<sup>23</sup> In the present case, however, the alleged victims' death sentences imposed on 24 February 2003 were commuted to long term imprisonment on 20 July 2004. The Committee considers that in these circumstances, the issue of the violation of Messrs. Khuseynov and Butaev's right to life has thus become moot.

9. 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 of the rights of Messrs. Khuseynov and Butaev under article 7, read together with article 14, paragraph 3(g); and article 14, paragraph 3 (b); and a violation of the right of Mr. Butaev under article 14, paragraph 3 (e), of the Covenant.

10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Messrs. Ibrokhim Khuseynov and Todzhiddin Butaev with an effective remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

11. 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.

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<sup>21</sup> *Supra* n.17, paragraph 39.

<sup>22</sup> *Ibid.*

<sup>23</sup> See, *inter alia*, Communication No. 907/2000, *Siragev v. Uzbekistan*, views adopted on 1 November 2005, paragraph 6.4.

[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.]

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