



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2836/2016*:**

<i>Communication submitted by:</i>	Shkurillo Alimov (represented by an NGO, Advocacy Centre on Human Rights)
<i>Alleged victim:</i>	Hairillo Amanbaev (deceased)
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	26 November 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 October 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2022
<i>Subject matter:</i>	Allegations of torture and death of the victim while in detention
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Right to life, torture, effective investigation
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7
<i>Articles of the Optional Protocol:</i>	None

1. The author of the communication is Shkurillo Alimov, a Kyrgyzstan national born in 1969. He submits the communication on behalf of his late nephew Hairillo Amanbaev, a Kyrgyzstan national, born in 1989, deceased in 2010. The author claims a violation of Mr. Amanbaev's rights under articles 6 (1) and 7, of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

The facts as presented by the author

2.1 On 30 June 2010, Hairillo Amanbaev was arrested by eight police officers of the so-called Mobile Task Force Office of the Main Directorate for Combating Drug Trafficking of

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

the Ministry of Internal Affairs of Kyrgyzstan (hereinafter, police). Upon detention, he was transferred to the Crime Investigation Unit of the Osh City Directorate of the Ministry of Internal Affairs (hereinafter – the police, or police station). On the same day, he was brought to the neurosurgery department of the Osh city hospital in critical condition, disclosing several severe injuries. He died in the hospital on 11 July 2010.

2.2 According to a preliminary investigation, it was established that Hairillo Amanbaev fell down the stairs of the building of Osh city police while he was trying to escape. The officials responsible for the preliminary investigation provided an explanatory letter of a defense lawyer, S.A.B.¹, who alleged she was able to meet with Mr. Amanbaev in the hospital, where he confirmed to her that he was trying to escape, fell from the stairs, and injured himself. Although this defense lawyer visited the victim, she was neither hired by him or his relatives, nor appointed by the authorities. S.A.B. made several statements that were contradictory, including a visit on a date that does not exist on calendar, 31 June 2010.

2.3 The findings of the preliminary investigation, and especially the explanatory letter of S.A.B., were in total contradiction with the statements of the victim's relatives and the medical staff. According to the relatives, Hairillo Amanbaev was found in critical condition with injuries that could have been the result of torture, was unable to speak due to his injuries and remained unconscious during his hospitalization until his death. The relatives of the victim, when they visited him in the hospital, also witnessed such signs of torture, as what appeared to be burn marks from extinguishing cigarettes, and signs of rope on the victim's legs, which seem to indicate he was hanged upside down. Several medical personnel, such as paramedic D.A.L. and K.A.M., confirmed that the victim never said a word during his hospitalization, despite a letter from S.A.B. who claimed to have spoken with the victim while he was in the hospital. The author claims that when Mr. Amanbaev was arrested on 30 June 2010, he was in perfect health.

2.4 On 12 July 2010, a forensic medical examination No. 291 was ordered by the investigation department of the Osh city police. The order requested to ascertain, for example, whether the author could have fallen to his death from a flight of stairs, but did not raise the possibility of torture. The report concluded that the victim died from multiple strikes or contacts with a blunt object or objects, and did not exclude that Mr. Amanbaev could have fallen from the stairs. However, this report only considered information provided by the police officers about their version of the events, and did not consider, for example, signs of injuries on the victim's legs, or medical personnel's testimonies.

2.5 On 14 July 2010, the investigator decided not to initiate criminal proceedings because, according to the decision, Amanbaev had caused his injuries by falling down the stairs and due to lack of *corpus delicti* in the actions of any government officials. As a result, the police persistently refused to initiate any criminal investigation. The Osh city prosecutors rejected these decisions by the police three times, and ordered further investigation. Upon further complaints, on 3 September 2010, the Osh city prosecutor himself finally initiated a criminal investigation.

2.6 However, on 10 November 2011, the Osh city prosecutor's office discontinued the criminal case concluding that Mr. Amanbaev's death was caused by the injuries he received falling down the stairs. On 28 February 2013, the Office of the Prosecutor General rejected the petition lodged on 14 November 2012 against the Osh city prosecutor's decision of 10 November 2011. The victim's lawyers then challenged this decision before the Osh City Court. On 11 April 2013, the Osh City Court upheld the decision taken by the Osh city prosecutor's office. An appeal was filed before the Osh Regional Court and on 13 June 2013, the Osh Regional Court quashed the decision of the City court of 11 April 2013, ruling that the decision of 10 November 2011 by the Osh City Prosecutor's office was unfounded and the criminal case to be reopened.

2.7 On an unspecified date, the Osh City Prosecutor's Office filed a motion within the supervisory review procedure, before the Supreme Court challenging the decision of the Osh City Regional Court. On 24 December 2013, the Supreme Court quashed the decision of the

¹ Though it is clear from the submissions that S.A.B. never represented the victim.

Regional Court and upheld the decision of the City Court of 11 April 2013 as lawful and justified.

The complaint

3.1 The author alleges a violation by the State party of Mr. Amanbaev's rights under articles 6 and 7, of the Covenant, as Mr. Amanbaev was allegedly subjected to severe acts of torture which resulted in his death. In addition, the authorities failed to investigate the exact circumstances which resulted in the violation of Hairillo Amanbaev's rights to request and obtain effective remedies for the violations occurred.

3.2 The author claims that the injuries from the acts of torture resulted in the death of Mr. Amanbaev, which amounts to a violation of his right to life under article 6 of the Covenant. The author also alleges a violation of Mr. Amanbaev's right to not be subjected to torture under article 7 of the Covenant. Hairillo Amanbaev was tortured by the police officers in the city of Osh and as a result, his body showed signs of severe injuries. According to the author, these allegations can be confirmed by the nature of the injuries on the victim's body, unequivocally corresponding to torture injuries. The testimonies of the relatives of the deceased and the medical staff treating him confirmed the above mentioned allegations of torture.

3.3 The author alleges that the Prosecutor's Office did not conduct detailed investigations and as a result, Mr. Amanbaev did not have effective remedies or legal protection. The exact reasons for his arrest were not investigated and remained unknown. In addition, the circumstances under which he was brought to the hospital were not investigated. The testimony of the lawyer S.A.B. was not critically analysed whereas it was filled with discrepancies and was in complete contradiction with other testimonies and evidence which was not assessed.

3.4 The investigation and the proceedings failed to take into account the incoherencies and contradictions in the testimonies of Osh city police officials. The author points out that the initiation of the criminal proceedings was delayed for two months due to the persistent rejection by the authorities to launch an investigation, and when the proceedings finally started, they were discontinued on the grounds of absence of *corpus delicti*.

3.5 The author also alleges that the Osh City Court decision was not fair, as it did not take into account a witness testimony of R.A.I., according to which, Mr. Amanbaev was beaten and tortured by the police officers. Accordingly, the author submits that the Committee should acknowledge a violation of Mr. Amanbaev's rights under the provisions of the Covenant and the authorities should provide the author with effective remedies including compensation.

State party's observations on admissibility and merits

4.1 On 7 March and 3 October 2017, the State party provided its observations on admissibility and merits of the communication. The State party concedes that the requirements under 5 (2) (b) of the Optional Protocol have been fulfilled by the author.

4.2 The State party submits that during the mass riots in June 2010 in the south of Kyrgyzstan, two police officers, B.A.I., and B.B.A., who worked for the Osh police, were driving in the city to "protect public order". On 14 June 2010, around 5p.m., on Mominova Street, they were stopped by "several persons of Uzbek ethnicity", who had firearms. Some of the participants of this group were identified as residents of Osh, K.A.N., his son N.U.H., and A.D.A.

4.3 These armed people took the police officers as hostages, and brought them to an unfinished construction site on Mominova Street, where K.A.N. stabbed police officer B.B.A. in the chest. After that, K.A.N. stabbed another police officer, B.A.I., in the abdomen, and cut his throat. On 18 June 2010, the prosecutor's office of the city of Osh initiated a criminal investigation. On 30 June 2010, at around 8:30 a.m., police officers detained several persons, including Hairillo Amanbaev, on suspicion of murdering police officers, B.A.I., and B.B.A. At about 11:30 a.m., police officers, who initially detained Hairillo Amanbaev, brought him to the police station, and handed him over to two other police officers, U.K.U. and R.A.B.

Several detained persons were charged with murdering the police officers, but Mr. Amanbaev's "involvement with the commission of the crimes ha[d] not been established". These persons, other than Mr. Amanbaev, were found guilty of murder and sentenced to different terms of imprisonment.

4.4 As to the death of Hairillo Amanbaev, police officer U.K.U. testified that when the Mr. Amanbaev was being brought to the police station, he suddenly "ran towards the stairs, tripped, and fell from the second floor to the first floor". He was subsequently taken to one of the offices in the building, where he did not feel well. Police officers immediately took him to the intensive care unit of the city hospital, where he underwent a surgery. Despite the surgery, on 11 July 2010, Mr. H. Amanbaev passed away.

4.5 Another detainee, M.A.T., who was brought to police station at the same time as Mr. Amanbaev, testified that he personally saw him run to the stairs and fall. Despite multiple requests in that regard, it was decided not to initiate a criminal investigation into these circumstances, due the absence of any evidence that a crime was committed. On 3 September 2010, the criminal investigation was initiated, to establish "objective truth". The investigation was objective, full and comprehensive. All the witnesses were questioned, and forensic examinations were conducted.

4.6 The initial forensic report concluded that multiple injuries were identified on Mr. Amanbaev's body, such as bruises in soft tissues of the left and right eye, bruising on the occipital area (back of the head), hemorrhaging in the parietal area (near the back and top of the head), hemorrhaging in the soft tissue of temporal (area behind ears) and fronto-temporal area (forehead area). The report also concluded that the victim suffered from pronounced cerebral edema with dislocation, had multiple bruises on both shoulders, bruises on his right side of the chest, with hemorrhaging, bruises on left knee and right sheen. Death was caused by severe cerebral edema and swelling due to a closed cranial injury. These bodily injuries may have occurred on 30 June 2010, as a result of fall on the stairs.

4.7 On 5 March 2011, based on the petition from the victim's lawyer, Mr. Amanbaev's body was exhumed to ascertain whether he was tortured or not. This examination, however, did not reveal any results, and did not identify any information that was not known before. On 10 November 2011, the investigator of the prosecutor's office of the city of Osh decided to close the criminal investigation, due to lack of evidence that a crime was committed. This decision was verified by the Office of the Prosecutor General and was found to be lawful. By decisions of the Osh City Court dated 11 April 2013, and the Supreme Court of Kyrgyzstan on 24 December 2013, confirmed the initial decision lawful as well.

Author's comments on the State party's observations

5.1 On 2 June 2017 and 26 March 2018, the author responded to the State party's observations on the merits of the communication. The author notes that the State party's response does not contain any substantive information, and is formal in its nature. As an example, the State party describes in details the killing of two police officers on 14 June 2010. It fails to provide detailed information on another murder that was committed in the police station. Despite numerous complaints by the lawyers for Mr. Amanbaev, the torture and death of the victim as a result of this torture were never investigated effectively.

5.2 The State party confirms the fact that Mr. Amanbaev was brought to the police station, and handed over to two police officers, U.K.U. and R.A.B. The State party also claims that the full investigation was carried out and that it was comprehensive. The author contends however, that the State party failed to provide full responses to the claims, and that Mr. Amanbaev was not afforded protection that is critical to detained persons.

5.3 On 14 July 2010, the investigator of the Osh police, G.A.M., issued a decision not to initiate a criminal investigation into torture allegations. On 22 July 2010, a senior prosecutor in the city of Osh, P.A.K., annulled this decision, and ordered that preliminary examination be resumed. In this decision, the senior prosecutor noted that G.A.M. handled his responsibilities without proper thought or consideration, in violation of requirements spelled out in article 19, of the Criminal Procedure Code of Kyrgyzstan. P.A.K. also listed several actions that needed to be taken, such as questioning a witness R.H.G., as well as obtaining testimonies of medical personnel who were present during the events in question.

5.4 Despite this decision, on 6 August 2010, investigator G.A.M., re-issued his decision not to initiate a criminal investigation, only to be overruled on 7 August 2010. On 17 August, the same investigator issued his third decision not to investigate, which was also overruled by another senior prosecutor, on 25 August 2010. This prosecutor also requested the investigator to question medical personnel, and inquire further into the results of the forensic reports. Finally, on 3 September 2010, the criminal case was initiated. On 16 February 2011, a Deputy Prosecutor General of Kyrgyzstan, Mr. Ivanov, intervened, and ordered the Osh city prosecutor to take several specific action to facilitate the investigations, but these actions, according to the author, were not taken. On 10 November 2011, the Osh city prosecutor decided to close the criminal investigation.

5.5 In the initial complaint to the Committee, the author clearly demonstrated that the victim was in a very serious condition when he was hospitalized. Medical workers noticed significant bruising and hemorrhaging, especially around the victim's left eye. The doctors also noted signs of what looked like burn marks from extinguishing cigarettes on the victim's right foot. Both legs had marks that were typical when the legs are tied with a rope or handcuffs and the body is hanged upside down. This testimony was confirmed by a junior paramedic D.A.L when she was questioned. The investigator G.A.M. ignored this information, and only relied on the results of the official post-mortem report, quoting that the injuries could have been caused "by the falling down, by the body's own weight", relying on the report No. 291 dated 12 July 2010.

5.6 The report No. 291, however, does not have this language. It states that the victim's injuries could have been caused by blunt objects, either by strikes, or contact. The experts issued this opinion only relying on the theory that the victim fell from the stairs, without being asked to express their views on possible torture. The State party instead relies on two witnesses, a detainee M.A.T., who claimed to be detained approximately at the same time, and his lawyer, S.A.B. This defense lawyer, S.A.B., issued a hearsay statement, noting that she learned about the incident from another unnamed person, after the fact, and was not present during the alleged fall. The State party never questioned the testimony of M.A.T., who was accused of committing a serious crime, but despite this fact, was released pending trial, and eventually escaped to another country.

5.7 The lawyer S.A.B., who did not represent the victim, visited him in the hospital, and testified that when she was there, Mr. Amanbaev suddenly came to his senses, and told her that he was indeed trying to run away and fell from the stairs. This testimony was accepted as true, despite evidence from report No. 291 that the victim was in coma when he was brought to hospital, and remained in coma until his death. S.A.B. insists that she visited him on 31 June 2010, though there being only 30 calendar days in June. Another detainee, R.A.I., testified during his appeal that he witnessed the victim to be hanged by his feet upside down, and beaten while in that position. He also claimed the victim "could not talk" during the interrogation due to being tortured, only "wheezed", his lips swollen and blue. The courts ignored this information, stating that R.A.I. did not provide this testimony during his own investigation or first instance court hearings. The courts only considered only those witnesses that testified that the victim fell from the stairs.

5.8 The courts also ignored the fact that the investigator in charge of Mr. Amanbaev's case was the same investigator who was dealing with the cases of M.A.T. and R.A.I. It is not clear, why there was not another investigator assigned to Mr. Amanbaev's case. The author therefore claims that the investigation was not carried out effectively, medical personnel, including doctors, who treated the victim, were never heard in court. The courts also ignored the fact that in front of the flight of stairs in the police station, there are always two armed guards who prevent anyone from leaving or coming inside, without proper authorization, especially detainees. The investigation also did not or could not identify men in military uniforms who brought the victim to the police station.

5.9 The State party failed to provide explanations or responses to the allegations mentioned above. The State party also failed to clarify the status of the victim when he was brought to the police station, as it was ascertained that he had nothing to do with the murders he was initially suspected of committing, and whether the victim was provided with a lawyer during his detention. Furthermore, the authorities failed to explain, why the victim was simply "thrown out" of the car when he was brought to the hospital, without any explanations

or proper handover. Nobody questioned the motives of S.A.B, who visited the victim in the hospital, despite not being his lawyer. Summarizing all the information presented, it is clear that the criminal investigation was discontinued because the results could have led to police officers being criminally charged for the torture that led to the death of Mr. Amanbaev.

5.10 The author therefore asks the Committee to find the State party in violation of Mr. Amanbaev's rights. The Committee should also request the State party to conduct a full and effective investigation, and take appropriate measures against those who subjected Mr. Amanbaev to torture and death. The Committee should also request the State party to provide Mr. Amanbaev's family with full and adequate compensation for the violations suffered, including rehabilitating Mr. Amanbaev.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the claim that the author has exhausted all available effective domestic remedies. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee considers that the author's claims under articles 6 (1) and 7, of the Covenant have been sufficiently substantiated for the purposes of admissibility. The Committee further considers that the author's claims raise issues under articles 6 (1) and 7, read in conjunction with article 2 (3) of the Covenant, find these claims to have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that Mr. Amanbaev died as a result of the ill-treatment and torture inflicted by the police following his arrest and detention on 30 June 2010. The Committee notes in that regard that the State party failed to provide any explanations as to the reasons of Mr. Amanbaev's arrest and detention (see para. 4.3), and whether he was provided with procedural guarantees during the detention, such as access to a qualified legal assistance. The Committee also notes that a post-mortem medical forensic examination No. 291 was performed almost immediately following the death of the victim. This report indicated that the cause of death was strikes or contact with blunt objects, and did not exclude that the Mr. Amanbaev could have died as a result of the fall from the flight of stairs. The Committee notes that the forensic medical report following the exhumation of the victim, did not yield any additional results (para. 4.7). The Committee notes that the State party denies any allegations of torture, while claiming that Mr. Amanbaev tried to escape, fell down from the stairs and critically injured himself. The Committee further notes that the State party does not contest the presence of external bodily injuries and accepts that they could have been the result of the falling down. The Committee observes, however that the State party failed to provide any results of the investigation into the death of Mr. Amanbaev. For example, the State party claims to have questioned all witnesses (see para. 4.5), but has not provided their identities or the results of the questioning. It also remains unclear to the Committee whether the State party's authorities questioned the relatives of the victim, who allegedly witnessed his body in the hospital bearing multiple signs of severe ill-treatment and torture, including what was described to be burn marks from cigarettes. The Committee further notes a statement of Mr. R.A.I., which was allegedly made under oath, in court, clearly

describing torture that Mr. Amanbaev was subjected to (para. 5.7). The Committee further notes that the State party does not provide any testimonies from the medical personnel, who, according to the author, could have testified that the victim's condition would not allow him to speak about the events in question, and does not provide any explanation as to why such testimonies were not used and disclosed. Furthermore, the Committee notes that the actions of the defence lawyer, S.A.B, who never represented the victim, also remain unexplained.

7.3 The Committee notes the author's claim that the ill-treatment and torture of Mr. Amanbaev while in the hands of the police, led to the arbitrary deprivation of his life. The Committee recalls its jurisprudence, including its general comment No. 36, paragraph 29, according to which States parties, by arresting and detaining individuals, take responsibility to care for their life,² and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights, such as those protected by article 6 of the Covenant.³ The Committee also recalls its general comment No. 31, in which it stated that, where investigations revealed violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible were brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 7 is an obligation of means, not of result,⁴ States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities.

7.4 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.⁵ In that regard, the Committee notes, in particular, the author's claim, which remained uncontested by the State party, that the police refused to initiate a criminal investigation three times, which led to a delay in such a time-sensitive matter, and that all these decisions were subsequently overruled by senior prosecutors (see paras. 5.3, 5.4). The Committee notes that when the investigation was finally launched on 3 September 2010, it was discontinued on 10 November 2011, without having shed any light on the facts and without having any findings disclosed.

7.5 The Committee concludes that, in the light of the State party's inability to rely on an adequate and conclusive investigation to rebut the author's allegations that Mr. Amanbaev died as a result of the torture he suffered while in custody, and in the absence of any further information of pertinence regarding the alleged shortcomings of the investigation, the facts as submitted reveal a violation by the State party of articles 6 (1) and 7, read alone, and in conjunction with article 2 (3), of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of Mr. Amanbaev under articles 6 (1) and 7, read alone and in conjunction with article 2 (3), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: (a) conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the torture and death of Mr. Amanbaev, and to prosecute and punish those responsible; (b) keep the author informed about the progress of the investigation; and c) and provide adequate compensation to the legal heirs

² *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.3; and the Committee's general comment No. 36 (2018) on the right to life, para. 29.

³ *Sathasivam and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.4; *Umetaliev and Tashtanbekova v. Kyrgyzstan* (CCPR/C/94/D/1275/2004), para. 9.2; and *Boboev v. Tajikistan*, para. 9.3.

⁴ *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3.

⁵ Communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermitt v. Uruguay*, Views adopted on 21 October 1982, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4.

of Mr. Amanbaev. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 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 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
