



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March – 4 April 2008

VIEWS

Communication No. 1466/2006

<u>Submitted by:</u>	Lenido Lumanog and Augusto Santos (represented by counsels, Soliman M. Santos, and Cecilia Jimenez).
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	The Philippines
<u>Date of communication:</u>	7 March 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 May 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	20 March 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Delay in the review of a conviction imposing death penalty.

Substantive issues: Right to be tried without undue delay; right to review of the conviction and sentence by a higher tribunal; right to equality before the courts and tribunals; death penalty, prolonged detention with detrimental effect on the author's health.

Procedural issues: Exhaustion of domestic remedies; non-substantiation of claim.

Articles of the Covenant: 6, paragraph 1; 9, paragraph 1; 14, paragraphs 1, 3 (c) and 5.

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

On 20 March 2008, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1466/2006.

[ANNEX]

ANNEX

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

Ninety-second session

concerning

Communication No. 1466/2006*

<u>Submitted by:</u>	Lenido Lumanog and Augusto Santos (represented by counsels, Soliman M. Santos, and Cecilia Jimenez).
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Philippines
<u>Date of communication:</u>	7 March 2006 (initial submission)

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

Meeting on 20 March 2008,

Having concluded its consideration of communication No. 1466/2006, submitted to the
Human Rights Committee on behalf of Mr. Lenido Lumanog and Mr. Augusto Santos for
consideration 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
communication, and the State party,

Adopts the following:

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

1.1 The authors of the communication are Mr. Lenido Lumanog and Mr. Augusto Santos,
Filipino nationals who, at the time of the submission of the communication, were on death row,
at New Bilibid Prison, Muntinlupa City, the Philippines. They claim to be victims of a violation

* 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, Mr. Walter
Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc,
Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael
Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

by the Philippines of articles 6, paragraph 1; 9, paragraph 1; 14, paragraphs 1, 3 (c) and 5; and 26 of the Covenant. They are represented by counsels, Soliman Santos and Cecilia Jimenez.

1.2 The Covenant entered into force for the State party on 23 January 1986 and the Optional Protocol on 22 November 1989. On 20 November 2007, the State party ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

Legal background

2.1 Criminal trials for alleged murder in the State party are conducted by regional trial courts having jurisdiction over the place where the crime was committed. Before 2004, criminal convictions by regional trial courts imposing the death penalty, *reclusion perpetua* and life imprisonment were automatically appealed to the Supreme Court, i.e. even if the accused did not appeal. Cases involving other kind of convictions could be appealed to the Court of Appeals and eventually in case of confirmation of the conviction –to the Supreme Court. However, in its judgment *People of the Philippines v. Mateo*, of 7 July 2004, the Supreme Court revisited and amended its previous rule on automatic review, pursuant to the Supreme Court's power to promulgate rules of procedure in all courts under Article VIII, Section V of the Philippine's Constitution.

2.2 According to the Court "if only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court.....A prior determination by the Court of Appeals on, particularly, the factual issues would minimize the possibility of an error in judgment". Thus, all death penalty cases which had not yet been decided when the "*Mateo*" judgment was issued, were transferred to the Court of Appeals for review.

The facts as submitted by the authors

3.1. The authors and three other individuals were sentenced to death for the murder of former Colonel Rolando Abadilla, occurred on 13 June 1996, by judgment of the Regional Trial Court (RTC) of Quezon City, Branch 103, in Criminal Case No. 96-66679-84 of 30 July 1999. They have been in detention since June 1996. After their motions for reconsideration and new trial were rejected by the RTC in January 2000, the case was transmitted to the Supreme Court in February 2000 for automatic review (appeal) of the death penalty.

3.2. All defence and prosecution appeals briefs for the purpose of the Supreme Court review were filed by June 2004. Soon after the last appeal brief, on 6 July 2004, the authors filed a "*Consolidated Motion for Early Decisions*". On 10 December 2004, they filed a "*Motion for Early Decision*", which was responded to by Supreme Court is resolution of 18 January 2005.

3.3. In the latter resolution, the Supreme Court transferred the case to the Court of Appeals for appropriate action and disposition, in conformity with its new jurisprudence pursuant to the judgment in "*Mateo*".

3.4. As a result, the authors filed an "*Urgent Motion for Reconsideration of Transfer to the Court of Appeals*" on 24 February 2005, stressing that the jurisprudence in "*Mateo*" should not

be applied automatically to each death penalty case, but rather take into account the specific circumstances of each case. Furthermore, it was argued that the Supreme Court was in a position to proceed with the review of the case.

3.5. The Supreme Court rejected the Motion on 29 March 2005 for lack of merits. A new similar and more substantiated request to reconsider the Supreme Court's decision was filed on 2 June 2005, but by Resolution of 12 July 2005 the Supreme Court reiterated its decision to transfer the case to the Court of Appeals, declaring that its decision was "in conformity with the Mateo decision".

3.6. The review of the case has been pending before the Court of Appeals since January 2005. Having lost the possibility of an earlier decision before the Supreme Court, the authors filed a "*Joint Motion for Early Decision*" on 12 September 2005. By Resolution of the Court of Appeals, the case was remitted for decision on 29 November 2006. On 11 January 2007, due to internal organizational matters of the Court of Appeals, the criminal case concerning the authors (*Cesar Fortuna et Al.*) was transferred to a newly appointed judge in the Court¹.

3.7. With respect to Mr. Lumanog only, it is submitted that he was denied interlocutory relief while the case was pending before the Supreme Court. The Court denied his "*Motion for New Trial and Related Relief*" by resolution of 17 September 2002, even though its jurisprudence in death penalty cases allowed a new trial in other precedents like "*The People of Philippines vs. Del Mundo*, of 20 September 1996. In a subsequent resolution dated 9 November 2004, the Supreme Court denied another motion filed by Mr. Lumanog, who had become a kidney transplant patient in 2003 and asked the Court to be returned to the specialist kidney hospital where he was treated as a patient in 2002 instead of being placed in the prison's general hospital. Mr. Lumanog went back to his cell, on his own request, as he preferred the conditions there to those of the prison's hospital.

The complaint

4.1 The authors claim to be victims of a violation of articles 6 paragraph 1; 9, paragraph 1; and 14, paragraphs 1, 3(c) and 5; and 26 of the Covenant.

4.2 The authors indicate that their complaint does not concern the judgment of the RTC of Quezon City or any other deliberations on the merits of their conviction. Their complaint is limited to the alleged violations of the Covenant caused by the transfer of their case from the Supreme Court to the Court of Appeals.

4.3 The authors claim that the decision of the Supreme Court not to review their case and transfer it to the Court of Appeals violates article 14, paragraph 5 of the Covenant insofar as it violates their right to have their conviction and sentence reviewed by a higher tribunal. They argue that the right to appeal involves a right to an effective appeal. A review of a case which has been pending for five years before the Supreme Court and then is transferred to the Court of Appeals which has no knowledge of the case and should start to study the files anew, makes the right to review ineffective.

¹ Supplementary information contained in a letter dated 28 February 2007. The State party did not respond to this letter.

4.4 The authors claim that the same issue constitutes a violation of article 14, paragraph 3(c) of the Covenant, since their case had been pending for five years before the Supreme Court and was ready for a decision when it was transferred to the Court of Appeals, thereby unduly delaying the hearing. The case has been pending before the Court of Appeals since January 2005.

4.5 The authors further claim that the Supreme Court's decision violates article 14, paragraph 1 read together with article 26 of the Covenant, because in similar cases (i.e. "*The People of Philippines v. Francisco Larrañaga*", of 3 February 2004), the Supreme Court denied to refer the case to the Court of Appeals and decided to review itself the case. Furthermore, with respect to Mr. Lumanog, it is submitted that the denial of his motions for a new trial and for return to a specialist hospital as a kidney transplant patient was discriminatory and violated article 14, paragraph 1 read together with article 26.

4.6 The authors assert that since the notion of a fair trial must be understood to include the right to a prompt trial, all of the above constitutes a violation of article 14, paragraph 1, especially of the right to a fair hearing by an impartial tribunal.

4.7 The authors allege a violation of article 6, paragraph 1 and article 9, paragraph 1, since the alleged violations of article 14 occurred in the context of a death penalty case with prolonged detention which had very detrimental effect on the authors, and notably for Mr. Lumanog.

4.8 By letter dated 28 February 2007, counsels provide supplementary submissions, claiming an aggravation of the alleged violation of articles 6, paragraph 1, and articles 14 paragraphs 3(c) and 5. According to the authors, the transfer of the case, on 11 January 2007, to a newly appointed judge in the Court of Appeals will create a further delay in the review of the case, because the new judge will have to study the file anew. These developments are accompanied by the further aggravation of the medical conditions of Mr. Lumanog. A medical report dated 16 February 2007 is submitted in that respect.

4.9 The authors claim that – since the complaint is limited to the decision of the Supreme Court to transfer the review of their case to the Court of Appeals – there is no other domestic remedy to exhaust. Another transfer from the Court of Appeals back to the Supreme Court would only delay further the final decision and be detrimental to the authors.

4.10 The authors request the Committee to recommend that the State party direct the Court of Appeals to swiftly decide on their case in order to remedy as far as possible the delay caused by the Supreme Court's previous transfer of the case. The Committee should advise the Supreme Court to review its position set out in "*Mateo*", especially with respect to old cases which could be easily decided by the Supreme Court.

4.11 The authors further submit that their complaint, as set out above, has not been submitted to any other procedure of international investigation or settlement.

State party's submission on admissibility and merits

5.1 By note verbale dated 4 July 2006, the State party challenges the admissibility of the communication for non-exhaustion of domestic remedies. It states that the transfer of the authors' case to the Court of Appeals was made pursuant to an amendment to the Revised Rules

of Court on Criminal Procedure (Sections 3 and 10 of Rule 122), providing that when the death penalty is imposed, the case must be considered by the Court of Appeals for Review. This amendment was prompted by the judgment in “*People of the Philippines v. Mateo*” of 7 July 2004, after which all death penalty cases which had not yet been decided by the Supreme Court were automatically transferred to the Court of Appeals for review and consideration.

5.2 The State party notes that the authors never challenged the modification of the Revised Rules of Court on Criminal Procedure in the State’s party courts and thus did not duly exhaust domestic remedies, as per in article 5, paragraph 2 (b) of the Optional Protocol.

5.3 On 2 November 2006, the State party submitted comments on the merits of the communication. On the alleged violation of article 14, paragraph 5 of the Covenant, the State party asserts that this claim has no merits, since the authors appealed against the decision of the trial court in conformity with the right of review of conviction by a higher tribunal under article 14, paragraph 5, of the Covenant.

5.4 With regard to the alleged violation of article 14, paragraph 3(c), the State party argues that only in case of delays in proceedings which are caused by “vexatious, capricious and oppressive delays” such a violation may occur. The case itself was ready for decision only in June 2004, when all briefs necessary for the deliberation were finalized. On 18 January 2005 - i.e. less than one year after the case was ready for a decision - the Supreme Court transferred it to the Court of Appeals following the change of the rules of procedure pursuant to the *Mateo* judgment. The new rules provide that in cases involving the death penalty the Court of Appeals must be seized. Only thereafter, if circumstances so warrant, the case may be sent to the Supreme Court for final disposition. With the modification prompted by the *Mateo* case, an additional layer of jurisdiction is granted for the review of death penalty cases².

5.5 On the authors’ claim that their right to equal protection before the law was violated, because in a similar case (*The People of Philippines v. Francisco Larrañaga*), the Supreme Court denied Larrañaga’s motion to refer his case to the Court of Appeals and decided the case itself, the State party notes that “*People v. Larrañaga*” was decided by the Supreme Court on 3 February 2004, i.e. five months before the “*Mateo*” ruling. After the decision, the accused Larrañaga filed a motion for reconsideration of his case by the Court of Appeals, but this motion was denied. The State party concludes that the case of “*Larrañaga*” differs substantially from the present one, where the Supreme Court had not yet ruled on any factual matters at the time the “*Mateo*” judgment was handed down.

5.6 With respect to the alleged discriminatory treatment which Mr. Lumanog suffered because of the Supreme Court’s denial of his motion for new trial, the State party submits that, under the domestic criminal justice system, the court may grant a new trial only in case of: a) errors of law or irregularities committed during the trial; b) discovery of new evidence which the accused could not with reasonable diligence have produced at the trial. In the case quoted by Mr. Lumanog, i.e. “*People v. Del Mundo*”, the Supreme Court granted a new trial upon presentation by the accused of relevant new criminal evidence. In the present case the author has failed to

² On 25 July 2006, the Philippine Congress passed Republic Act N° 9346, abolishing the death penalty.

prove the existence of all the elements necessary for a re-trial. Regarding Mr. Lumanog's claim that the denial of his motion for return to the specialist kidney hospital was discriminatory, the State party asserts that the order of the Supreme Court was based on a careful review of all the circumstances of the case, including the medical condition of Mr. Lumanog.

5.7 As to the claim that the authors' prolonged detention, particularly in the case of Mr. Lumanog as a kidney transplant patient, would constitute a violation of article 6, paragraph 1 and article 9, paragraph 1, the State party submits that the detention of the authors occurred pursuant to a lawful judgment rendered by a trial court which afforded all guarantees of due process and found them guilty of murder. The State party recalls that there is no "additional stress in view of the pending death penalty", as the death penalty was abolished in the Philippines on 25 July 2006.

Authors' comments

6.1 On 17 January 2007, the authors submitted their comments on the State party's observations.

6.2 With respect to exhaustion of domestic remedies, they submit that they did challenge internally the modification of the rules of procedure. Thus, two motions were filed on behalf of Mr. Santos: An *Urgent Joint Motion for Reconsideration of Transfer to the Court of Appeals*, filed on 24 February 2005; and an "*Urgent Joint Motion for Explanation and Reconsideration of the Resolution of 29 March 2005 Denying Recall from the Court of Appeals*", filed on 2 June 2005. Despite these motions, the Supreme Court did not change the decision to transfer the case to the Court of Appeals. Furthermore, the authors recall that if a new rule of procedure can be modified by case-law – as it happened in "*Mateo*" – then another case-law could create a further modification or amendment. In conclusion, the authors argue that the above-mentioned "*Urgent Motions for Reconsideration*" were the last available domestic remedy, because the Supreme Court is the last and supreme judicial authority.

6.3 On the merits, the authors submit that their main substantive claims relate to article 14, paragraphs 5 and 3 (c), which should be considered jointly by the Committee. With respect to article 14, paragraph 5, they argue that the fact that they appealed the conviction of the trial court does not mean *per se* that their right to appeal to a higher tribunal was respected. They reiterate that the right to appeal involves a right to an effective appeal, and that the fact that their case was pending for five years before the Supreme Court renders it ineffective. When the case was transferred to the Court of Appeals, the Supreme Court was ready to deal with it. The Court of Appeals, on the contrary, did not have any knowledge of the procedural and factual elements involved.

6.4 The violation of the right to be tried without undue delay under article 14, paragraph 3 (c), is linked to the violation of article 14, paragraph 5. It is submitted that the transfer of the case from the Supreme Court to the Court of Appeals added an additional period of time of more than two years to the five years the case had already been pending at the Supreme Court. The authors are in detention since June 1996 and their case remains under review for reasons not attributable to them.

6.5 On the alleged violation of articles 14 (1) and 26, the authors submit that while it is true that the Supreme Court, in *Larrañaga*, had already reviewed the death penalty conviction decision before the '*Mateo*' ruling was adopted, this decision was not final and could still have been reviewed by the Court of Appeals. The authors further submit that the Supreme Court's resolution denying Larrañaga's motion was denied for "lack of merit" rather than on procedural grounds. While it is true that in the State party's judicial system, it is the Court of Appeals rather than the Supreme Court to deal with questions of fact, the Supreme Court retains always discretionary power to review questions of fact before it. The authors assert that the right to equality before the law was violated because, even in presence of similar circumstances, the Supreme Court refused to decide on their case, while it used its discretionary power to decide on the merits of the *Larrañaga* case.

6.6 On the alleged violation of articles 6, paragraph 1 and 9, paragraph 1, the authors claim that, despite the abolition of the death penalty in June 2006, the right to life should be interpreted extensively, as a right to "quality life". The conditions of detention of the authors are incompatible with this right. The same argument is applied to the alleged violation of article 9, paragraph 1.

Issues and proceedings before the Committee

Considerations of admissibility

7.1 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 communication is admissible under the Optional Protocol to the Covenant.

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

7.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes that the State party has challenged the admissibility of the communication on the ground that the authors did not challenge the new rules of criminal procedure before the State party's courts. The Committee considers, however, that domestic remedies have been exhausted insofar as the authors did challenge the transfer of their appeal from the Supreme Court to the Court of Appeals by filing two motions in the Supreme Court on 24 February and 2 June 2005, both of which were rejected.

7.4 In relation to the alleged violation of article 14, paragraph 1, together with article 26 of the Covenant on the ground that in similar cases the Supreme Court refused to refer the case to the Court of Appeals and instead decided to review the case itself, the Committee considers that it has no competence to compare the present case with other cases dealt with by the Supreme Court. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 With respect to the alleged violation of articles 14, paragraph 1 and 26 claimed on behalf of author Lumanog only, in relation to the alleged discrimination inherent in the Supreme Court's decision to deny his motion for a new trial, the Committee also finds the claim

inadmissible under article 2 of the Optional Protocol, in view of the fact that it has no competence to compare the present case with other cases dealt with by the Supreme Court. Regarding the denial of his motion for return to a specialist kidney hospital as a kidney transplant patient, the Committee finds that the allegations have not been sufficiently substantiated and therefore declares this claim inadmissible under article 2 of the Optional Protocol.

7.6 With respect to Mr. Lumanog's claim concerning a violation of article 6, paragraph 1 in that his detention at the National Bilibid Prison is incompatible with his medical status, the Committee notes that despite the medical reports, such claim is not sufficiently substantiated, also in view of his refusal to be placed in the prison's general hospital. Accordingly, the Committee considers this claim inadmissible under article 2 of the Optional Protocol.

7.7 In relation to the alleged violation of article 9, paragraph 1 of the Covenant, the Committee also considers that this part of the communication is inadmissible for lack of substantiation, under article 2 of the Optional Protocol.

7.8 With respect to the alleged violation of article 14, paragraph 5, of the Covenant, the Committee notes that the authors' appeal remains pending before the Court of Appeals, a higher tribunal within the meaning of article 14, paragraph 5, which is seized of the case so as to enable it to review all factual issues pertaining to the authors' conviction. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7.9 The Committee therefore decides that the communication is admissible only insofar as it raises issues under article 6, paragraph 1, and article 14, paragraph 3(c), of the Covenant.

Consideration of the merits

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

8.2 With respect to a possible violation of article 6, paragraph 1, the Committee considers that this claim has been rendered moot after the abolition by the Philippine Congress of the death penalty in July 2006.

8.3 In relation to the authors' claim under article 14, paragraph 3 (c), it may be noted that the right of the accused to be tried without undue delay relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal³. All stages whether at first instance or on appeal, must be completed "without undue delay". Therefore, the Committee must not limit its consideration exclusively to the part of the judicial proceedings subsequent to the transfer of the case from the Supreme Court to the Court of Appeals, but rather take into account the totality of time, i.e. from the moment the authors were charged until the final disposition by the Court of Appeals.

³ See General Comment No. 32 on article 14 "Right to equality before courts and tribunals and to a fair trial", para. 35. See also, for instance, Communications No. 526/1993, *Hill v. Spain*, para. 12.3; No. 1089/2002, *Rouse v. Philippines*, para.7.4; and No. 1085/2002, *Taright, Touadi, Remli and Yousfi v. Algeria*, para. 8.5.

8.4 The Committee recalls that the right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice⁴. In this respect, the Committee notes that, the authors are in continuous detention since 1996 and their conviction, dated 30 July 1999, had been pending for review before the Supreme Court for 5 years before being transferred to the Court of Appeals on 18 January 2005. To date, more than three years have elapsed since the transfer to the Court of Appeals and still the authors' case has not been heard.

8.5 The Committee considers that the establishment of an additional layer of jurisdiction to review death penalty cases is a positive step in the interest of the accused person. However, State parties have an obligation to organize their system of administration of justice in such a manner as to ensure an effective and expeditious disposal of the cases. In the Committee's view, the State party has failed to take into consideration the consequences, in terms of undue delay of the proceedings, that the change in its criminal procedure caused in this case, where the review of a criminal conviction was pending for many years before the Supreme Court and was likely to be heard soon after the change in the procedural rules.

8.6 The Committee is of the view that, under the aforesaid circumstances, there is no justification for the delay in the disposal of the appeal, more than eight years having passed without the authors' conviction and sentence been reviewed by a higher tribunal. Accordingly, the Committee finds that the authors' rights under article 14, paragraph 3 (c) of the Covenant, have been violated.

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 reveal a violation of article 14, paragraph 3 (c) of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including the prompt review of their appeal before the Court of Appeals and compensation for the undue delay. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. By becoming a party to the Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and, pursuant to article 2 of the Covenant, the State party has undertaken to ensure 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. In this respect, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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

⁴ See General Comment No.32, para. 35.