



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/96/D/1771/2008
7 September 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

DECISION

Communication No. 1771/2008

<u>Submitted by:</u>	Mr. Mohamed Musa Gbondo Sama (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Germany
<u>Date of communication:</u>	25 October 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 March 2008 (not issued in document form)
<u>Date of adoption of decision:</u>	28 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Allegedly unfair domestic proceedings

Procedural issue: Non-exhaustion of domestic remedies, abuse of right of submission, non-substantiation of claims

Substantive issue: Fair trial, arbitrary detention, freedom of expression, prohibited discrimination

Articles of the Covenant: 7, 9, paragraphs 1-4; 14, paragraphs 1-3, 5; 19; 26

Articles of the Optional Protocol: 2, 3 and 5, paragraph 2(b)

[Annex]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS

Ninety-sixth session

concerning

Communication No. 1771/2008*

Submitted by: Mr. Mohamed Musa Gbondo Sama (not
represented by counsel)

Alleged victim: The author

State party: Germany

Date of communication: 25 October 2005 (initial submission)

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

Meeting on 28 July 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication dated 25 October 2005, is Mohamed Musa Gbondo Sama, a German national born in 1946 in Sierra Leone. He claims to be a victim of a violation by Germany of article 7; article 9, paragraphs 1 to 4; article 14, paragraphs 1 to 3, and paragraph 5; article 19; and article 26, of the Covenant. He is not represented.

1.2 On 4 July 2008, the Special Rapporteur on New Communications and Interim Measures decided that the admissibility of the communication should be considered separately from the merits.

* 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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present decision.

1.3 On 2 March 2009, the Special Rapporteur on New Communications and Interim Measures decided not to issue a request for interim measures pursuant to rule 92 of the Committee's Rules of Procedure.

Factual background

Proceedings for forgery of documents in conjunction with other offences

2.1 On 31 March 1998, an arrest and search warrant were issued against the author who was charged with forgery of documents, indirectly abetting the certification of false documents, fraud, and violations of the Aliens Act. Pursuant to a search warrant, the premises of the author's business and home were searched on 2 April 1998. From 3 April to 4 May 1998, as ordered by the Berlin Tiergarten District Court, the author was held in pre-trial detention for danger of flight and collusion. On 19 June 1998, the Berlin Regional Court¹ rejected the author's appeals against both the arrest and search warrant on the merits. Following his release on 4 May 1998, the author's passport was seized. He was obliged to report twice a week to the police and was prohibited from leaving Berlin until the ban was lifted on 19 January 2000. His passport was returned to him on 15 August 2000.

2.2 On 24 June 2002, the Berlin Tiergarten District Court sentenced the author to a suspended sentence of nine months imprisonment with a two-year probation period, for forgery of documents, indirectly abetting the certification of false documents, fraud and violation of the Aliens Act. On 19 June 2003, the Berlin Regional Court² amended the decision and confirmed the sentence and probation period. The author's appeals against his conviction were rejected, including on 24 May 2006 by the Federal Court.

2.3 On 26 January 2005, the Berlin Regional Court³ rejected the author's application for re-trial for failure to meet the pre-conditions set forth in the Code of Criminal Procedure. It also rejected the author's request for legal aid ruling that the legal aid granted in the initial proceedings continues to be in effect in the re-trial proceedings. On 4 April 2006, the Federal Constitutional Court confirmed this judgement. On 13 April 2006, the Berlin Court of Appeal⁴ rejected the author's request for a hearing in the re-trial proceedings, for lack of substantiation. The Federal Constitutional Court confirmed this judgement on 24 May 2006.

2.4 On 18 May 2005, the author was informed that the decision on revocation of his suspended sentence of nine months' imprisonment depended on the outcome of proceedings against him for suspected libel. On 16 May 2007, the Berlin Tiergarten District Court⁵, revoked the suspended sentence in light of the author's other convictions during the probation period, on libel charges for insults on 9 March and 30 September 2004, as well as for other libel for which proceedings had not yet been concluded. The court rejected the author's request for legal aid. On 27 June 2006, the author's request for compensation was rejected and on 6 March 2007, his appeal was rejected on the merits. On 23 April 2008, his request for pardon was also rejected.

¹ Landgericht Berlin.

² Landgericht Berlin.

³ Criminal Chamber of the Landgericht Berlin.

⁴ Kammergericht Berlin.

⁵ Amtsgericht Tiergarten.

Libel proceedings

2.5 On 17 February 2005, the author was sentenced to a fine for libel against a police officer who had visited his home regarding a violation of transport regulations. The author claims that the court based its decision solely on the police officer's statement and did not consider his own version of the incident. He submits that it was the police officer who insulted him first when he called him "Schwarzer Neger"⁶ and that he simply responded by telling him that "anybody who calls an African "Schwarzer Neger" may be assumed to have a racist tendency". On 18 May 2005, the Tiergarten District Court sentenced the author on two additional libel counts against another police officer and the public prosecutor. The author claims that he only made general comments, which were not personally directed against these two officials. The author's appeals against both convictions for libel were rejected, including by the Federal Constitutional Court.

Summary offence against the law on legal services

2.6 On 16 May 2006, the Göttingen District Court sentenced the author to a fine for offering legal services without a valid license. The author contested the findings, claiming that he had successfully completed University legal training ("Erstes juristisches Staatsexamen"). On 4 July 2006, the Göttingen Regional Court dismissed the author's appeal, who had contested the independence of the judge. On 1 August 2006, the Federal Constitutional Court rejected the author's appeal for lack of substantiation and due to abusive language⁷. On 13 December 2007, in the absence of any payment, the Göttingen Regional Court ordered the author's imprisonment, because of his non-payment of the fine despite repeated reminders.

Proceedings for tax evasion

2.7 On 31 August 1999, the Financial Office of Berlin issued an order for the suspension of the author's businesses based on non-payment of his taxes for the fiscal year 1997. On 1 February 2001, the first instance finance court⁸ declared inadmissible the author's appeal against the tax imposition for 1997. The author's request for legal aid was also rejected. On 22 November 2005, the author was convicted of tax evasion for fiscal year 1997. His request for free legal representation was rejected for lack of an indictable offense. All appeals were rejected, including by the Federal Constitutional Court. On 2 July 2007, the second instance court⁹ granted the author's revision request for lack of access to the author's file, insufficient time allocated for the preparation of his defence and absence of counsel.

The complaint

3.1 The author claims that his pre-trial detention from 3 April to 4 May 1998 and the ban imposed on him to refrain from leaving the city of Berlin until 19 January 2000 violated article 9, paragraphs 1 to 4, of the Covenant.

⁶ "Black nigger".

⁷ The author claims that the German judicial system is criminal, arbitrary and has a Neo-Nazi tendency.

⁸ Finanzgericht Berlin.

⁹ Kammergericht Berlin.

3.2 The author claims that his conviction in proceedings for forgery of documents with other offences was based on evidence given by unreliable persons who were in conflict with him and some of whom had a criminal record. He further submits that witness evidence in his favour was discarded on the grounds of lack of credibility. He claims that the domestic courts were biased (article 14, paragraph 1), that they did not respect his right to be presumed innocent before proven guilty (article 14, paragraph 2) and that the witnesses on his behalf were not deemed credible (article 14, paragraph 3(e)).

3.3 The author further claims that, as more than four years passed from the opening of the criminal investigation against him to his conviction, the trial for forgery of documents with other offences violated his right to a trial within reasonable time (article 14, paragraph 3(c)). In this respect, he submits that he was co-operative in the investigation and that the nature of the charges against him did not justify such a delay.

3.4 The author further maintains that, contra article 14, paragraph 3(d), of the Covenant, he was denied free legal assistance in the review proceedings for falsification of documents in conjunction with aiding indirect falsification of official records, fraud and a minor crime in accordance with the Aliens Act.

3.5 The author claims a violation of article 14, paragraph 5, as his appeals in the proceedings for forgery of documents with other offences were rejected without a hearing.

3.6 He maintains that, in the trial for forgery of documents with other offences, he was convicted despite a lack of incriminating evidence against him. He therefore claims that his conviction was based on discriminatory grounds, e.g. the colour of his skin and his African origin. He thus claims to be a victim of discrimination, in violation of article 26.

3.7 With regard to the revocation, on 16 May 2007, of the suspended sentence for forgery of documents with other offences, and the order for him to start serving his sentence, the author claims that the suspended sentence was arbitrarily revoked after eight years. He claims that this constitutes a violation of article 9, paragraph 3 and article 14, paragraph 3(c).

3.8 As regards the libel proceedings against two police officers and a public prosecutor, the author submits that these convictions were based exclusively on the officials' testimonies and that his version of the events was summarily dismissed. He claims in this respect a violation of his right to freedom of expression under article 19.

3.9 Concerning the proceedings for tax evasion, the author claims that the time lapse of more than seven years before bringing charges against him on this count reveals a violation of article 14, paragraph 1. He notes that the police carried out a search of his business premises on 2 April 1998, and that charges were only filed against him on 22 November 2005. He claims that the procedure was prescribed, considering that all matters on tax evasion suspicion need to be addressed within three years.

3.10 Finally, the author submits that all of the legal proceedings against him constituted cruel, inhuman or degrading treatment or punishment, in violation of article 7 of the Covenant.

The State party's submission on admissibility

4.1 By submission of 19 June 2008, the State party challenged the admissibility of the author's communication and requested the Committee to consider admissibility separately from the merits. It maintains that the allegations are not sufficiently substantiated, that the claim with regard to the absence of an oral hearing on appeal is incorrect and constitutes an abuse of the right of submission according to the Covenant, and that the author did not exhaust available and effective domestic remedies.

4.2 The State party clarifies the facts as submitted by the author. On 24 June 2002, the author was convicted by the Tiergarten District Court to nine months' imprisonment suspended on probation for two years for forgery of documents in conjunction with other offences. Following oral hearings that began on 22 April 2003, the Berlin Regional Court amended the sentence with regard to the qualification of the crimes (forgery of documents in conjunction with abetting indirect forgery of official records, fraud and a misdemeanour under the Aliens Act) but otherwise confirmed the lower court's sentence. This judgement became executory on 15 January 2004. On 14 January 2004, the Berlin Court of Appeal rejected the author's appeal on the merits. On 30 September 2005, the Federal Constitutional Court declared the author's appeal against the first and second instance judgements of 24 June 2002 and 19 May 2003 inadmissible for lack of substantiation. On 19 March 2008, the Federal Constitutional Court also rejected the author's appeal against the Berlin Court of Appeal judgement of 14 January 2004 without reasons.

4.3 On 26 January 2005, the Berlin Regional Court declared the author's request for re-opening the proceedings inadmissible and rejected legal assistance for these proceedings, stating that the free legal assistance in the principal proceedings also applied to the re-opening proceedings. On 1 September 2006 and on 21 December 2007, the Berlin Court of Appeal rejected the author's appeals. On 19 September 2006, the Registrar of the Federal Constitutional Court requested the author to advise if he sought a judicial ruling with regard to his appeal against the Berlin Court of Appeal judgement of 1 September 2006. As the author did not respond, no ruling was issued.

4.4 On 17 February 2005, the author was sentenced to a libel fine for insults made on 6 May 2004. On 18 May 2005, the author was sentenced to another fine for insults made on 9 March and 30 September 2004. On 12 September 2005, the Berlin Regional Court, after joining the two matters, rejected the author's appeals against both judgements. On 8 May 2006, the Berlin Court of Appeal rejected the author's appeal and therefore the Berlin Regional Court judgement became executory on 9 May 2006.

4.5 On 16 May 2007, the Tiergarten District Court revoked the suspended sentence issued on 24 June 2002, as amended by the Berlin Regional Court on 19 June 2003 on grounds of several procedural actions against the author during his probation period. On 27 June 2006, he was sentenced to a suspended prison term of four months for insults made on 22 July 2005. On 18 October 2006, he was sentenced to a fine for insult made on 28 July 2005. Additional proceedings were initiated with regard to insults allegedly made on 10 June 2004, 20 September 2004, 19 April 2005, 30 June 2005 and 1 November 2005. The State party submits that the author never denied authorship of the letters leading to the proceedings. On 12 September 2007,

the Federal Constitutional Court denied leave to appeal of the author's appeal regarding the 16 May 2007 judgement revoking the suspended sentence for failure to exhaust all available remedies. On 19 November 2007, the Berlin Regional Court rejected the author's appeal against the revocation order. This was confirmed on 23 April 2008 by the Berlin Court of Appeal. On 16 January 2008, the Federal Constitutional Court rejected a second appeal by the author. On 23 April 2008, the Senate Administration of Justice rejected his pardon application.

4.6 The State party submits that the communication is inadmissible, as the requirements in articles 1, 2, 3 and 5, paragraph 2, of the Optional Protocol are not met. It maintains that the author has not sufficiently substantiated his claim of a violation of article 9, paragraph 3 and article 14, paragraph 3(c) concerning the alleged delay of eight years between the first instance judgement of 24 June 2002 and its revocation. It underlines that the revocation of the suspended sentence complies with the requirements of the German Criminal Procedure Code (*Strafprozessordnung - StPO*). The suspended sentence became executory on 15 January 2004 and was revoked on 16 May 2007, three years and four months later in accordance with the Criminal Code, which provides that the suspended sentence can be revoked if the convict commits a crime or serious offence during the probation period. The author committed crimes on 9 March 2004, 6 May 2004 and 30 September 2004 and his libel conviction became executory on 9 May 2006. The State party maintains that, as of May 2005, the author was duly informed of the possible consequences that the libel proceedings could have for the execution of the previously suspended prison sentence. The State party submits that revocation one year and four months after the end of the probation period complies with established case-law and State party practice under the Criminal Procedure Code. Therefore, the State party maintains that the author has not sufficiently substantiated why the revocation of the suspended sentence and the invitation to serve the sentence would violate articles 9, paragraph 3, or 14, paragraph 3(c), of the Covenant.

4.7 With regard to the author's claim that he was deprived of an appeal hearing before the Berlin Regional Court, the State party submits that this allegation is incorrect, given that the author did participate in a hearing before this court. The State party submits that this part of the communication should be declared inadmissible as an abuse of the right of submission, in accordance with article 3 of the Optional Protocol.

4.8 Lastly, the State party submits that the author's claims relating to legal aid under article 14, paragraph 3(d) are inadmissible for non-exhaustion of domestic remedies. Despite the request for clarification from the Federal Constitutional Court on 19 September 2006, the author did not provide sufficient substantiation of his claim and did not request a Federal Constitutional Court ruling. The State party maintains that this part of the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

Author's further comments

5.1 The author maintains by submission of 15 August 2008 that all domestic remedies have been exhausted but that, contrary to article 14, the Federal Constitutional Court rejected all his appeals without a hearing. He underlines that he did not receive a fair trial, as a key defence witness in the proceedings for forgery of documents in conjunction with other offences was not heard because of the absence of a valid address. The author claims that he was in a position to

provide that witness' address. He adds that he was denied legal assistance in his appeal proceedings, as the lawyer refused to continue to represent him.

5.2 On 6 January 2009, the Public Prosecutor of Göttingen summoned the author to serve a prison sentence of 17 days for failure to pay the fine imposed by the Regional Court Göttingen for offering unlicensed legal advice (see paragraph 2.6). On 26 January 2009, the Federal Constitutional Court rejected the author's appeal in this respect. On 9 and 21 February 2009, the author requested the Committee to issue interim measures of protection on his behalf with regard to his imprisonment. He argues that his imprisonment would amount to a violation of article 9, article 14, paragraph 2 and article 19. He underlines that his ill health¹⁰ does not allow his imprisonment. He reiterates earlier claims about the absence of witness examination and a hearing in the appeal process and claims to be a victim of discrimination.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the 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.

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

6.3 With regard to the author's claim that his pre-trial detention from 3 April to 5 May 1998 and the order not to leave the city of Berlin was arbitrary and in violation of article 9, paragraphs 1 to 4, the Committee notes that the pre-trial detention and order not to leave Berlin were both issued and terminated by the Tiergarten District Court, that the author was duly informed of the reasons for his arrest and the order not to leave Berlin, and that he appealed the decision. The information before the Committee does not indicate that the proceedings before the authorities of the State party suffered from any defects. Accordingly, the Committee considers that the author has not, for purposes of admissibility, sufficiently substantiated his allegations under article 9 and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 With respect to the allegations under article 14, paragraphs 1, 2 and 3(e), the Committee observes that these complaints refer primarily to the appraisal of evidence adduced at the trial, a matter falling in principle to the national courts, unless the evaluation of evidence was clearly arbitrary or constituted a denial of justice¹¹. In the present case, the Committee is of the view that

¹⁰ Attested by a medical certificate.

¹¹ See General Comment No. 32, Right to equality before courts and tribunals and to a fair trial (article 14), CCPR/C/GC/32 (2007), para. 26; see *inter alia* Communications No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, para. 6.2; No. 867/1999, *Smartt v. Republic of Guyana*, Views adopted on 6 July 2004, para. 5.3; No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 29 March 2004, para. 5.7; No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, para. 6.3; No. 1006/2001, *Martínez Muñoz v. Spain*,

the author has failed to demonstrate, for purposes of admissibility, that the conduct of the criminal proceedings in his case was arbitrary or amounted to a denial of justice. It consequently considers that this part of the communication has not been sufficiently substantiated, and thus finds it inadmissible under article 2 of the Optional Protocol.

6.5 As to the author's claim under article 14, paragraph 3(c), concerning the alleged unreasonable delay of four years between his arrest on 3 April 1998 and conviction on 24 June 2002 in the proceedings for forgery of documents in conjunction with other offences, the Committee notes that official charges were brought against the author on 10 March 2002. The Committee observes that the author has not presented sufficient information to indicate why this delay is considered excessive. In the light of the information before the Committee, finds that this claim is insufficiently substantiated and therefore declares it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further notes that the author's libel convictions were based on his conduct during his probation period (2004-2006), and that these convictions became final by judgement of the Berlin Court of Appeal on 8 May 2006. The author's suspended sentence was subsequently revoked on 16 May 2007. The Committee considers that the author has not presented sufficient information to show why this delay would be considered excessive.¹² In light of the information before the Committee, it concludes that this claim is insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

6.7 With regard to the author's claim under article 14, paragraph 3(d), of the Covenant, claiming that legal assistance was denied for the appeal proceedings related to charges for forgery of documents in conjunction with other offences, the Committee notes that in the domestic courts, the author did not reply to a letter from the Registry of the Constitutional Court of 18 September 2006, informing him that there were serious doubts about the admissibility of his constitutional challenge, and that it was not properly motivated or documented. This part of the communication is accordingly inadmissible for failure to exhaust all domestic remedies in accordance with article 5, paragraph 2(b) of the Optional Protocol.

6.8 With regard to the author's claim that he was not granted an oral hearing in the appeal proceedings, the Committee refers to its General Comment No. 32, which states that article 14, paragraph 5, of the Covenant does not require a full retrial or a "hearing"¹³, as long as the tribunal carrying out the review can look at the factual dimensions of the case. It therefore

Views adopted on 30 October 2003, para. 6.5; No. 1084/2002, *Bochaton v. France*, decision of 1 April 2004, para. 6.4; No. 1120/2002, *Arboleda v. Colombia*, decision adopted on 25 July 2006, para. 7.3; No. 1138/2002, *Arenz v. Germany*, decision of 24 March 2004, para. 8.6; No. 1167/2003, *Ramil Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.7; and No. 1399/2005, *Cuartero Casado v. Spain*, decision of 25 July 2005, para. 4.3.

¹² See General Comment No. 32, para. 35.

¹³ See General Comment No. 32, para. 48; Communication No. 1110/2002, *Rolando v. Philippines*, Views adopted on 3 November 2004, para. 4.5; No. 984/2001, *Juma v. Australia*, decision of 28 July 2002, para. 7.5; No. 536/1993, *Perera v. Australia*, decision of 28 March 1995, para. 6.4.

considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2, of the Optional Protocol.

6.9 With respect to the alleged violation of article 26, of the Covenant, the Committee considers that the author failed to substantiate sufficiently, for purposes of admissibility, why he considers that the domestic court ruled against him on discriminatory grounds or that it took into account the colour of his skin and/or national origin. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.10 With respect to the alleged violation of article 9, paragraph 3 and article 14, paragraph 3 (c) concerning the proceedings leading to the revocation of the suspended sentence, the Committee notes the State party's correction of the facts submitted by the author and notes that neither the documents submitted by the author nor by the State corroborate the author's claim that the judge in the libel proceedings mentioned that his ruling would not bear any consequence on the suspended prison sentence. The Committee considers that the author failed to sufficiently substantiate his claim for purposes of admissibility, and declares it therefore inadmissible under article 2 of the Optional Protocol.

6.11 As to the author's claim that the libel proceedings against him constitute a violation of article 19, the Committee considers that, in the light of the information before it, the matter is not sufficiently substantiated and it therefore declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.12 With respect to the alleged violation of article 14, paragraph 1, of the Covenant concerning the undue delay in the proceedings for tax arrears, the Committee notes that, on 2 July 2007, the author's revision request was granted and the Berlin Regional Court was ordered to revise its decision. The Committee therefore considers this part of the communication inadmissible for failure to exhaust all domestic remedies according to article 5, paragraph 2(b), of the Optional Protocol.

6.13 As to the author's claim that the order of imprisonment for failure to pay a fine imposed by the District Court of Göttingen violates article 9, article 14, paragraph 2, and article 19, of the Covenant, the Committee refers to its conclusions in paragraphs 6.3; 6.4 and 6.11 and considers this part of the communication insufficiently substantiated and thus inadmissible under article 2, of the Optional Protocol.

6.14 With respect to the author's claim that all of the legal proceedings against him constituted inhuman, cruel and degrading treatment, in violation of article 7, the Committee notes that the author makes this claim in a sweeping and unsubstantiated form, without offering a minimum of documentary materials, explanations or arguments in support of his claim. The Committee therefore considers this claim incompatible with the provisions of the Covenant according to article 3 of the Optional Protocol.

7. The Committee therefore decides:

- a) That the communication is inadmissible under articles 2, 3 and 5, paragraph 2 (b), of the Optional Protocol;

- b) That this decision shall be communicated to the State party and to the author.

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

APPENDIX

Individual opinion of Committee member Ms. Ruth Wedgwood (partially dissenting)

In finding that this communication is inadmissible in its entirety, the Committee has acted based on a record that does not include complete copies of the various court decisions whose effect we are asked to assess. It is always helpful to the Committee to receive such materials from the parties.

Based on this incomplete record, however, there is one claim by the author as to which the Committee has, in my view, not adequately explained its finding of inadmissibility. I would have asked the State party to comment on the merits of that issue.

In 2002, the author was given a suspended sentence of nine months imprisonment and two years probation on a conviction for forgery and other crimes. In May 2005, he was informed that the suspension of his sentence might be revoked, and therefore he would have to serve his original sentence, depending on the outcome of various libel actions brought against him.

On 16 May 2007, the author was sent to jail under his suspended sentence, as a consequence of the judgments in the various libel actions. One of these stemmed from an encounter between a policeman and the author occurring in his home on May 6, 2004. On that date, the author claims that he was visited by the police officer on an inquiry concerning an alleged violation of transport regulations, and that the officer addressed him with a raw racial epithet that needs no translation. This allegation may or may not be true, but the state party has not addressed the matter on the facts. The author then is said to have replied by accusing the police officer of racism. The author was sentenced to a fine for his part in this episode on 17 February 2005, and the conviction became one of the bases for his revocation of probation on 16 May 2007.

The author has specifically invoked Article 19 of the Covenant, and Article 26 might seem to have relevance as well. To be sure, an encounter between a police officer and a civilian involves a social obligation on the part of both sides to act with courtesy and restraint, and sometimes it is a fraught situation in which 'fighting words' may be seen as actionable and provocative. But if it were true that a racial epithet was used in direct address by a public officer, the type of reply attributed to the author might not constitute actionable libel. Admittedly, the author seems to have offered a wide-ranging set of opinions in other public settings, including courtrooms. But further elucidation of the issues arising from the events of May 6, 2004 would have been helpful in appropriately disposing of this communication.

[signed] Ms. Ruth Wedgwood

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