



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communications Nos. 3200/2018, 3201/2018, 3202/2018, 3203/2018, 3204/2018, 3205/2018, 3206/2018 and 3207/2018*, **

<i>Communications submitted by:</i>	Mukhamadrasul Abdurasulov, Osmonali Otamirzaev, Bakhodir Zhalalov, Abdurashit Yangibaev, Muradil Abduvaitov, Islombek Atabekov, Ikhtier Khamdamov, Abdumomin Abduvaitov (represented by counsel, Utkirbek Dzhabborov)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Kyrgyzstan
<i>Date of communications:</i>	10 May 2018 (initial submissions)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 July 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	15 July 2022
<i>Subject matter:</i>	Torture and mistreatment of the group of authors during the events of June 2010
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; lack of investigation; arbitrary detention; denial of fair trial
<i>Articles of the Covenant:</i>	2 (3), 7, 9 (1), 10 (1) and 14 (1) and (3) (b), (d), (e) and (g)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The authors of the eight communications, all nationals of Kyrgyzstan, are Mukhamadrasul Abdurasulov, Osmonali Otamirzaev, Bakhodir Zhalalov, Abdurashit Yangibaev, Muradil Abduvaitov, Islombek Atabekov, Ikhtier Khamdamov and Abdumomin Abduvaitov. The authors claim that the State party violated their rights under various articles

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

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



of the Covenant as set out below. The Optional Protocol entered into force for the State party on 7 January 1995. The authors are represented by counsel.

1.2 On 15 July 2022, pursuant to rule 97 (3) of the Committee's rules of procedure, the Committee decided to join communications Nos. 3200–3207/2018 submitted by the same counsel, on behalf of eight different authors, for a joint decision, in view of substantial factual and legal similarity.

Facts as submitted by the authors

2.1 The authors submit that from 10 to 14 June 2010, inter-ethnic clashes between Kyrgyz and Uzbek groups took place in the south of Kyrgyzstan. More than 470 people were killed and properties destroyed, with most of the victims and damaged properties belonging to members of the Uzbek minority. More than 1 million residents fled to Uzbekistan and 300,000 persons were internally displaced. A state of emergency, with a curfew, was declared by the Kyrgyz authorities from 13 to 22 June 2010. In 2013, the Office of the Prosecutor General of Kyrgyzstan reported that, based on the events of June 2010, 5,647 criminal cases had been initiated.

2.2 The criminal prosecutions that followed those events were marked by reports of human rights abuses against detainees and defendants. One of the most prominent cases, in which the defendants reported to have suffered from torture and mistreatment, was the so-called SANPA case. According to the investigators, between 12 and 14 June 2010 a group of ethnic Uzbeks started a fire that blocked a road not far from the SANPA cotton processing plant, near Suzak, a village in the south of the country. The crowd poured fuel oil on the road and set it on fire, to block passing cars. The mob then allegedly shot and killed drivers and their passengers who were forced to stop owing to the fire. As a result, 16 persons were shot dead and nine vehicles were set on fire. On 14 June 2010, Z.H., then the prosecutor of Suzak District, initiated criminal investigations into these events and an investigation task force was created.

2.3 At different times and places, the authors were all detained, tortured and tried as a result of these events and submit the following:

(a) On 28 June, at around 10 a.m., Mukhamadrasul Abdurasulov was going to his place of employment when two men wearing civilian clothes stopped him.¹ They forced him into a car and took him to Suzak District police station. He was taken to one of the offices on the second floor of the building, where about 10 police officers started beating him and forced him to remove all his clothes. One of the police officers also used ethnic slurs. Another police officer forced him to wear a gas mask, while blocking the flow of air into the mask. All the officers demanded that he confess his guilt in participating in the June riots and subsequent murders. Owing to the beatings that he suffered, the author lost consciousness several times. The police officers also extinguished their cigarettes on his body and used a wooden bat to torture him. Unable to withstand the torture, the author signed a document, which contained his confession, but he was unable to read the text. The beatings continued until the court hearings, which began on 16 August 2010;

(b) Osmanali Otamirzaev was arrested on 2 July 2010 at his place of residence.² The author's home was searched and police officers took the author to the police station. There, he was beaten by eight police officers, who wanted him to confess to committing a murder. After a while, the author was taken to another room, where he was asked again whether he had committed any murders. When he did not confess to murder and refused to sign a confession, a police officer resumed the beatings, put a gas mask on him to suffocate him and used a black plastic bag over his head, so he could not breathe. Suffering from heavy beatings and torture, the author finally signed two or three blank pieces of paper. Police officers promised him that he would be released after a day or so but instead the torture continued over the next days;

¹ The author submits that his detention was only registered nine hours later on the same day.

² The author claims that his arrest was only registered nine hours after his actual detention.

(c) On 30 July 2010, two police officers arrived at Bakhodir Zhalalov's place of residence. He was taken to the police station and interrogated there about someone named U.R.³ During the interrogation, the author received a phone call from a relative informing him that police officers were searching his house. The author asked that the search be conducted in his presence, but this request was denied. The author was placed in the temporary isolation facility of the Suzak police district, where he did not have a bed, lights, food, water or access to a toilet. As the author is a former police officer himself, he asked to be placed in a separate cell, as he was concerned for his safety, but this request was denied. His cellmates threatened the author and he could not sleep due to the threats. In the middle of August 2010, the author was brought into one of the rooms of the police station, where he was threatened with physical violence, to convince him to sign a confession. He wrote a statement but refused to admit that he had committed any crimes. The author was first tortured on 2 or 3 September 2010. Two police officers, who were wearing masks, came into his cell and started beating him up. One of the strikes bruised his left eye, which affects his vision to this day. Police officers told him that they would beat him every day until he signed a confession. Finally, under psychological and physical threats, the author agreed to sign a confession;

(d) On 17 June 2010, while Abdurashit Yangibaev was working in the fields, along with a colleague, he saw several police officers approaching him. They accused him of spying and started beating him. One of the police officers threatened to shoot him with a machine gun. The author was arrested without being given a reason, and was brought to the Suzak District police station.⁴ There, the author was beaten on the head and body and suffocated with a blue plastic bag over his head. He was then taken to an inner courtyard of the police station, where police officers tied his hands and legs and directed a stream of ice-cold water onto his body. After that, police officers started beating him and as a result, the author lost seven teeth. Police officers asked the author to confess to crimes related to the SANPA events. The author told them that at the time in question, he was carrying out his work-related duties and had nothing to do with any murders. The police officers continued to torture him and threatened to bring in his three sons, so the author signed all the papers he was given. On 22 June 2010, the author was transferred to Bozor-Korgon police station, where he was beaten by police officers. Using pliers, police officers tortured him by removing nails from one of the fingers on his left hand. The next day, the author was beaten again: this time, the police officers used batons and beat the author on the soles of his feet. Both his feet turned black as a result and he was unable to walk for at least two days. The author was not provided with medical assistance when he requested it;

(e) Muradil Abduvaitov worked as a butcher and was at his workplace on 23 June 2010, when four members of the security forces asked him to follow them to a police station. Initially, the four officers told the author that they were from the tax agency and wanted to inspect his business. The author was brought to the Zhalal-Abad department of national security, but even before they arrived, the officers started beating him up in the car.⁵ The author understood that he was being accused of participating in the tragic events earlier that month. In the police station the author also saw his brother, Abdumomin Abduvaitov. The author was interrogated about his whereabouts during the events in question. When the author denied having been at the SANPA location, security officers showed him a video of him passing by in his car not far from that location, in Balta-Kazyk village, which was close to the Uzbekistan-Kyrgyzstan border. The beatings continued, including using plastic bottles filled with water, for more than three hours. The author could not stand the torture and signed all the papers he was given. The author cannot read or write and did not know the content of the papers that he signed. Later that day, the author was brought to the Suzak District police station, where he was beaten again, this time by police officers. The police officers demanded that the author testify against his two colleagues as participants in the SANPA events. When he refused, he was taken to another room, which they called a "signing room" or a "pressure room", where he was beaten again. He was also given an injection of an unknown substance. The author finally signed some blank pieces of paper. Back in his cell, he was beaten again,

³ The author claims that his arrest was only registered 12 hours after his actual detention.

⁴ The author claims that his arrest was only registered eight hours after his actual detention.

⁵ The author claims that his arrest was only registered 34 hours after his actual detention.

even after signing the blank papers. He was told that he was being punished for killing persons of Kyrgyz ethnicity;

(f) At the time of his apprehension, Islombek Atabekov was 18 years old and worked as a mechanic not far from Suzak village. On 6 August 2010, the author was at his place of work, when two persons in civilian clothing came to him and asked about his father. At some point, he was forced into a car and once inside, he saw that his mother was there. When they were brought to the Suzak police station he was separated from his mother.⁶ In one of the offices, he was interrogated and police officers demanded that he confess to committing a murder. The author refused. He was then asked to sign a statement, which he did, without reading the contents, since he is illiterate. The author was taken to another room, where he was beaten for about two hours. The officers hit the soles of his feet with police batons. At some point, several other officers joined in and they continued beating him for two days. During this time, the author was suffocated by police officers putting a gas mask on his head and blocking the air passage. On 8 August 2010, he was interrogated and this time the questioning was entered in the registration book. He was beaten again when he refused to sign blank pieces of paper. The same day, the author was taken to one of the offices in the building, where he saw his mother. His mother was asked to call the author's father, and when he picked up the phone one of the police officers told him to come to the police station and if he did, they would release his son. The author's mother was asked to bring \$1,000 for his release. The author's mother filed a complaint with the prosecutor's office, claiming that she was being extorted by police officers, but her complaint was ignored;

(g) At the time of the events, Ikhtier Khamdamov was an unemployed 19-year-old, who could not read or write very well. On 7 July 2010, he was on his way to see his father, when he was stopped by four officers of the Zhalal-Abad regional police.⁷ The author was taken to one of the offices on the second floor. Eight or nine officers demanded that he drafted a letter explaining his whereabouts during the SANPA events. The author started writing that he was at home and had nothing to do with killing anyone. The police officers became angry that he would not confess his crimes and started beating him up. They used police batons to hit him on the soles of his feet and gas masks to suffocate him. The author was hurt but could not ask for medical assistance. For two full days, the author was handcuffed to a chair in one of the offices; he was not given food, water or allowed access to a toilet. Several times during the two days, police officers would come in and beat him. No lawyer was present at any time. On the third day, the author finally gave in to torture and signed a statement to the effect that he had participated in the SANPA events;

(h) Abdumomin Abduvaitov was detained on 23 June 2010.⁸ He was in the fields planting rice in the village of Suzak. The author was taken to Suzak police station by a group of three persons, whom he recognized as being from the national security services. As he entered the building, the author also saw his younger brother, Muradil Abduvaitov, and later heard his screams when he was being tortured. At the police station, several officers started beating him as well and demanded that he confess his participation in the tragic events of that year. The author was taken to another office, where a national security officer started beating him up while his hands were tied with a piece of fabric. Other officers later joined in and the beating continued for five hours. They asked about the author's whereabouts from 11 to 17 June and told him that they had video evidence against him, although he never actually saw the video. The beatings continued until the author signed a confession, which was typed up by police officers who asked him to sign below the text without reading it. When the author was taken to his cell, he was again beaten up. The officers who were torturing him explained that he was being punished for killing people of Kyrgyz ethnicity.

2.4 The initial apprehension and detention of the authors were not registered, as the police officers used that time to torture them. Two or three days after their initial apprehension, the authors were taken before a judge, without being warned that there would be a pretrial hearing. Lawyers representing the authors did not assist them during the pretrial hearing and asked them to admit that they had committed the crimes of which they were being accused. The

⁶ The author claims that his arrest was only registered 24 hours after his actual detention.

⁷ The author claims that his arrest was only registered 53 hours after his actual detention.

⁸ The author claims that his arrest was registered only 34 hours after his actual detention.

authors complained to the judges that they were being tortured, but the presiding judge did not respond and ordered them all to be held in detention pending trial.

2.5 During their detention, the authors suffered from a lack of space, fresh air and natural light, among other things. The toilet was not separated from the rest of the cell, where 8 to 12 detainees were held at a time, in a space of approximately 7m². In such conditions, the authors could not properly prepare for their defence, as there was no space, no desks and no light. During their detention, the authors were constantly labelled as murderers of Kyrgyz people and felt threatened. The deplorable conditions of detention were documented by organizations such as the Organization for Security and Cooperation in Europe in a report in 2011.⁹ The temporary isolation facilities, which should have been used only for short periods of detention of a few hours before the detainees were transferred to pretrial detention centres, were instead used to detain people for several months. When the authors were transferred from one isolation facility to another, they were given a so-called “welcome”, namely they were beaten up by other detainees. The authors asked for medical assistance but their requests were ignored.

2.6 The authors were charged under various articles of the Criminal Code of Kyrgyzstan, such as carrying, illegal purchase, sale, storage or transportation of firearms (art. 241); murder, while committing a crime of violence, causing risk to life motivated by ethnic or racial hatred (art. 97); robbery, seizure of someone’s property while using violence by an organized group, using weapons and organizing and participating in mass riots (arts. 168, 174 and 233).

2.7 During the trial, the authors all complained to the presiding judge that they had been tortured in order to obtain confessions, that they had had to sign pre-prepared statements or blank pieces of paper and that some of them could not read and/or write. The presiding judge dismissed their complaints and the prosecutor did not take appropriate steps to investigate them. The trial itself suffered from serious procedural violations. The representatives and relatives of the victims, who were in the courtroom, frequently interrupted the court proceedings by shouting, including shouting threats to the authors. The lawyers representing the authors were also physically threatened and received death threats for merely carrying out their functions. In one instance, the defence lawyers and relatives of the victims were involved in physical altercations during a break, with one of the relatives of the victims attacking a defence lawyer with a metal object, which led to the hearings being postponed.

2.8 On 30 September 2010, following the violence in the courtroom, attorneys for the defendants filed a complaint to the Zhalal-Abad regional court, which assured them that they would be provided with a more secure environment for further court hearings. No action was taken and in December 2010, one of the lawyers, N.U.R., was attacked and beaten by the representatives of one of the victims. At other times, defence attorneys received threats to their lives, if they continued their work.

2.9 Moreover, during the breaks between court hearings, the authors continued to be subjected to beatings and torture to force them to confess before the judge. On 30 September 2010, after the first court hearing, the defendants were taken to the Suzak police station, where the police station chief called in someone named Shakir. Shakir was said to be the chief of the special riot police force and he ordered several police officers to beat up all the authors. The beatings continued for one hour. The officers who tortured the defendants demanded a confession in court and told them they would be sentenced to life imprisonment whether they confessed or not.

2.10 The presiding judge banned the relatives of the authors from attending the trial and explained that he could not “guarantee their safety” owing to the size of the courtroom. With the tacit agreement of law enforcement officers, representatives of the victims attacked and assaulted the authors’ relatives at the Nookan district court in total impunity. During the trial itself, representatives of the victims interrupted the authors and did not allow their lawyers

⁹ The authors refer to a report at www.osce.org/ru/bishkek/93783.

to ask questions or put forward evidence. The presiding judge did nothing to stop this. Several of the authors' relatives were hospitalized with grave injuries.¹⁰

2.11 During the appellate hearings, the same scenario of violence, intimidation and threats continued. The very few witnesses who were allowed by the judge to testify were interrupted by the shouting of the relatives of the victims, who behaved aggressively and attacked them inside the courtroom. The presiding judge was forced to stop the hearings. After each court hearing, the defendants were taken to a temporary isolation facility and on the way there were beaten up by the guards and special riot police officers.

2.12 On 12 October 2010, two unknown persons entered the offices of the non-governmental organization, "Justice", which represented several of the defendants and their relatives. These persons said that they were relatives of the victims and demanded that the lawyers be "quiet and silent" during the court hearings, otherwise each lawyer would face the consequences. They asked the lawyers why they were defending murderers and demanded a list of all the employees and managers of Justice and their full names. Shortly before the hearing on 14 October 2010, the lawyers received threats related to their role. They reported these facts to the prosecutor's office and sent a complaint to the Special Rapporteur on the situation of human rights defenders. The prosecutor of the Zhalal-Abad district told the lawyers that such incidents would not happen again. The lawyers, however, continued to receive threats and were prevented from doing their jobs. On 15 October 2010, during a press conference in the city of Osh, defence lawyers announced that unless they and their relatives were guaranteed protection, they would refuse to take part in the court hearings. They also announced that they could not carry out their responsibilities as defence lawyers due to "constant pressure from victims and their supporters".

2.13 During the trial, the judge, without providing explanations, would deny the authors' requests to make statements; relatives and other witnesses for the defence were not questioned; and the court ignored inconsistencies in the testimonies of witnesses for the prosecution. For example, witnesses for the prosecution testified that they remembered the names of the defendants but were unable to describe the clothing they had been wearing or any other items that would identify the alleged attackers. Witnesses for the defence, on the other hand, were too scared to testify and as the defence attorneys were concerned about their safety, they could not ask the questions they wanted to.

2.14 On 23 November 2010, the authors were found guilty of the charges and were sentenced to life imprisonment and confiscation of their property. On 9 March 2011, the Zhalal-Abad regional court denied all motions to question additional witnesses during the appellate proceedings and upheld the decision of the lower court. It should be mentioned that the decision by the regional court is an exact copy of the initial verdict and sentence. On 21 June 2011, the Supreme Court of Kyrgyzstan also upheld the decision of the lower court, also copying it verbatim. For example, the error of charging the authors with article 97 of the Criminal Code several times was repeated in the decision by the regional court and the Supreme Court.

Complaint

3.1 The authors claim that the State party violated their rights under article 7 of the Covenant by torturing them in order to obtain confessions for crimes they did not commit. Those violations included beatings, suffocation and other forms of physical and mental torture. Five of the eight authors also provide medical certificates, signed by an expert in forensic psychiatry, T.K. Asanov. The expert concludes that his findings are consistent with the torture alleged by the authors.¹¹

3.2 Furthermore, the authors claim that the State party failed to conduct an impartial and effective investigation into the claims of torture, as required by the Committee in its jurisprudence. Despite the authors' complaints during the court hearings and their requests for investigation addressed to the prosecutor's office, the State party failed to take any action,

¹⁰ The authors claim that the grandmother of Islombek Atabekov and a sister of Osmonali Otamirzaev were admitted to hospital after being attacked.

¹¹ Medical certificates are not provided by Abdumomin and Muradil Abduvaitov or Bakhodir Zhalalov.

in violation of the authors' rights under article 2 (3), read in conjunction with article 7, of the Covenant.

3.3 The State party also violated the authors' rights under article 9 (1) of the Covenant. The authors claim that their apprehension and detention were not formalized or registered for hours or days, despite the provisions of article 95 of the Criminal Procedure Code, which requires registration within three hours of initial apprehension. They claim this was to allow time for police officers to torture them. During the detention hearings, the court never considered any alternatives to detention. Moreover, during the hearings, the authors were represented by "pocket" defence lawyers provided by the Government, who failed to put forward any arguments in defence of their clients.

3.4 The authors' conditions of detention violated their rights under article 10 (1) of the Covenant. They claim that they were detained for several months without proper medical care. In their cells there was insufficient light and air. In violation of the Covenant, the authors shared their cells with other persons who were already convicted of a crime. They were kept in temporary isolation facilities that were intended to hold detainees for only a few hours, not months. There were no proper sanitary and hygienic conditions in the cells as the toilets were not separated from the rest of the cells. All the cells were overcrowded.

3.5 The State party also violated the authors' rights to a fair and public hearing. The relatives and lawyers for the defendants were threatened by representatives of the victims and the authorities could not provide a safe and secure environment in which the authors' lawyers could call witnesses, ask questions, clearly state their position, question the position taken by the prosecutor and consult with the authors, in violation of their rights under article 14 (1). The court hearings were closed to the public, in particular to the authors' relatives, although the court did not adopt any formal decisions in that regard. The court hearings were not impartial, as the defence could not exercise the same rights as the prosecution. Finally, the trial of the authors was not fair, for the same reason, namely that the authors, their lawyers and the authors' relatives were threatened and assaulted.

3.6 In addition, the authors did not have adequate time or facilities to prepare for their defence. They were pressured into signing blank pieces of paper, which would later contain a confession and confirmation that they had signed them after reading them. Furthermore, the authors did not have the necessary time and opportunities to meet with their lawyers. The lawyers that the authors hired privately were threatened and assaulted and did not have free access to the authors. Those threats and the lack of access occurred both during the pretrial investigation and during the court hearings, which violated the authors' rights under article 14 (3) (b) and (d) of the Covenant.

3.7 The authors' confessions, which were obtained by torture, were used against them to prove their guilt, in violation of article 14 (3) (g) of the Covenant. Because of physical and mental torture, threats to their families and relatives, threats and beatings by police officers and cellmates, the authors submit that they were willing to sign anything they were given by the investigators.

3.8 The authors were further prevented from calling witnesses in their defence, in violation of their rights under 14 (3) (e) of the Covenant. Understanding that this right is limited, the authors nevertheless submit that the court refused to call witnesses who would establish their innocence. The authorities also claimed that such witnesses could not be called because they had been threatened and their safety could not be guaranteed.

State party's observations on admissibility and the merits

4.1 On 28 December 2018, the State party provided its observations on the admissibility and merits of the communications.¹² The State party submits that on 12 and 13 June 2010, near the cotton-processing plant SANPA in Suzak village, a group of persons of Uzbek ethnicity blocked part of the highway from Bishkek to Osh. Those persons were armed with

¹² The State party submitted joint observations, responding to the eight communications under consideration in the present document.

firearms, explosive substances in glass bottles, wooden sticks and metal objects. They burned and destroyed 11 cars and in the process, shot the drivers and passengers of the vehicles.

4.2 As a result, the unidentified bodies of five males and two females were brought to the morgue of the Zhalal-Abad regional hospital. On 14 June 2010, the Suzak district police initiated a criminal investigation into these events. On 15 June 2010, another body was found, that of Z.T.O., who was shot to death and his car burned nearby. The same day, the body of A.B.Y. was found near Suzak village, shot to death with a firearm.

4.3 On 15 June 2010, near the SANPA plant, the police detained one of the authors, Abdurashit Yangibaev.¹³ They found in his possession a knife and firearm cartridges. The author was detained under the Criminal Procedure Code of Kyrgyzstan in order to establish whether he was involved in the murders and the destruction of a property near the SANPA plant. The author was subsequently charged with these crimes and taken into custody pending his trial.

4.4 Later during the investigation, police officers identified other accomplices of Abdurashit Yangibaev, such as Mukhamadrasul Abdurasulov, Osmonali Otamirzaev, Bakhodir Zhalalov, Muradil Abduvaitov, Islombek Atabekov, Ikhtier Khamdamov and Abdumomin Abduvaitov. All were detained pending trial and on 16 August 2010, their cases were forwarded to the Suzak district court for trial, at which all the authors were found guilty and sentenced to life imprisonment with confiscation of their property. The Zhalal-Abad regional court and the Supreme Court of Kyrgyzstan upheld the verdicts and the sentences.

4.5 The authors' guilt was proven when the authorities examined the crime scene, the destroyed vehicles and the bodies of the victims. Furthermore, the authorities questioned 21 victims and 3 representatives of victims. The State party authorities further questioned 18 witnesses and conducted forensic, medical, chemical and biological examinations.

4.6 Five of the authors, Islombek Atabekov, Osmonali Otamirzaev, Muradil Abduvaitov, Abdurashit Yangibaev and Mukhamadrasul Abdurasulov, complained that the Suzak district police officers subjected them to "unauthorized methods of inquiry and investigation". The prosecutor's office looked into these claims and on 14 February 2014, decided not to open a criminal investigation, owing to a lack of corpus delicti. The decision not to initiate a criminal investigation was found lawful by a decision of the court dated 23 May 2014 and confirmed on appeal by the Zhalal-Abad regional court on 5 August 2014, and by the Supreme Court of Kyrgyzstan on 13 January 2015.

4.7 A similar complaint was brought by Abdumomin Abduvaitov through his lawyer, O.Z.H. On 17 April 2017,¹⁴ the Suzak district prosecutor's office again refused to initiate a criminal investigation, a decision that was upheld by the Suzak district court on 6 April 2015, the Zhalal-Abad regional court on 22 May 2015 and the Supreme Court on 8 September 2015. The prosecutor's office also refused to investigate the claims submitted by Bakhodir Zhalalov, a decision which was also upheld by the courts, with a final decision handed down by the Supreme Court of Kyrgyzstan dated 17 January 2017.

4.8 The authors, however, did not file a supervisory review complaint to the Supreme Court under article 384 of the Criminal Procedure Code of Kyrgyzstan. Under the provisions of that article, the authors had a right to bring a complaint about the verdicts and sentences that were handed down, for a variety of reasons, such as violations of the rules for gathering evidence, unlawful actions or failures to act of the investigators, prosecutors or judges, and circumstances that would indicate that the authors were innocent. Due to the fact that such supervisory complaints were not filed, the authors' complaints before the Committee should be considered inadmissible.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 19 November 2019, the authors submit that the State party failed to respond to their allegations. The State party described the moment when one of the authors,

¹³ In his submission, this author claims that he was initially detained on 17 June 2010.

¹⁴ This date is that included by the State party in its submission but according to copies of the documents submitted by the authors, 17 June 2014 seems more likely to be the correct date.

Abdurashit Yangibaev, was detained and claims that it occurred on 17 June 2010. The author, however, in his initial complaint before the Committee, submitted that he was arrested on 15 June 2010. This confirms that the State party violated his rights under article 9 of the Covenant. The State party further claims that on the same date, 17 June 2010, the author was charged with several crimes. On 19 June 2010, the Suzak district court decided to detain the author pending trial. This confirms that the author was arbitrarily detained for 48 hours before he was formally charged and that his detention was decided by a judge after 96 hours of actual detention, in direct violation of article 110 (2) of the Criminal Procedure Code of Kyrgyzstan in force at the time. This once again confirms a violation of the author's rights under article 9 (1) of the Covenant. As for the other authors, the State party does not submit any observations regarding their unlawful detention.

5.2 The authors also submit that they are not asking the Committee to reconsider facts and evidence or establish that they are innocent. The authors are asking the Committee, most importantly, to find that the State party authorities failed to protect them from torture or to investigate effectively their claims of torture. The authors submit that the initial examination (*proverka*), without initiation of a criminal investigation into the torture allegations, cannot be considered as effective. This has been confirmed by the Committee in its jurisprudence in a number of cases, such as *Akhadov v. Kyrgyzstan*¹⁵ and *Ernazarov v. Kyrgyzstan*.¹⁶ The State party must take all the necessary steps to question witnesses, request medical documents and take other relevant actions. Any deficiency in the conduct of the investigation, such as a lack of thoroughness of the investigation process, can affect the possibility of finding perpetrators of torture.

5.3 Furthermore, the Committee has established jurisprudence regarding the events of June 2010 in the south of the country. In *Ashirov v. Kyrgyzstan*, the Committee stated that: "Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant."¹⁷

5.4 As for the State party's contention that the authors failed to file a complaint under the supervisory review procedure, the authors submit that the Committee's established jurisprudence is that they do not have to exhaust domestic remedies that are not effective. During the supervisory review procedure, the presence of the defendant is not guaranteed. In the case of *Askarov v. Kyrgyzstan*, for example, the Supreme Court denied Mr. Askarov's request to be present.¹⁸ Furthermore, the supervisory review court does not consider new evidence and only examines whether the relevant provisions of law have been correctly applied. In the case of *Berdzenishvili v. Russian Federation*, the European Court of Human Rights similarly adopted an approach that the supervisory review procedure was not a remedy that needed to be exhausted for the purposes of admissibility.¹⁹

5.5 The State party does not provide a detailed response to the allegations of torture brought by the authors. In its observations, the State party does not deny the fact that the trial was not fair, that during the trial the authors were tortured and that the judge could not guarantee a safe and secure environment for the defendants, their lawyers and family members. The State party does not deny threats of violence and violent attacks and assaults that occurred inside and outside the courtroom. The authors were therefore unable to call witnesses in their defence, did not have adequate time or facilities to prepare for the proceedings, while the law enforcement officers pretended not to see those violations and did nothing to prevent them from happening.

5.6 In its general comment No. 32 (2007), the Committee stated that: "Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from

¹⁵ See [CCPR/C/101/D/1503/2006](#).

¹⁶ See [CCPR/C/113/D/2054/2011](#).

¹⁷ [CCPR/C/120/D/2435/2014](#), para. 7.3.

¹⁸ See [CCPR/C/116/D/2231/2012](#).

¹⁹ Application No. 31697/03.

the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects".²⁰ In *Gridin v. Russian Federation*, the Committee found a violation of article 14 (1) of the Covenant, in a case where the trial court failed to prevent a hostile environment from the public present in the courtroom, which in turn prevented the defence lawyer from conducting an effective cross-examination of witnesses.²¹

5.7 The authors note that the State party did not respond to their other claims. They reiterate the position that they provided in their initial submissions; ask the Committee to find violations of all articles of the Covenant that they have put forward; provide the authors with effective remedy, including full compensation for the violations suffered; take steps to secure the release of the authors; direct the State party to quash their verdicts and sentences and, if necessary, conduct a new trial upholding all fair trial rights, such as the presumption of innocence and other procedural guarantees. The authors further request a prompt and impartial investigation into their allegations of torture and payment of adequate compensation, with reimbursement of court fines, fees and other court-related expenses.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it 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 notes that the State party challenges the admissibility of the communications due to non-exhaustion of the available domestic remedies. The State party has observed in that regard that the authors have failed to file a complaint to the Supreme Court under the supervisory review proceedings, as set out under article 384 of the Criminal Procedure Code of Kyrgyzstan. In that connection, the Committee recalls its jurisprudence, according to which filing requests for a supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.²² The Committee notes that in the present case, the State party has not shown whether and in how many cases petitions to the Supreme Court for supervisory review procedures were successful in cases of allegations of torture and ill-treatment. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communications.

6.4 The Committee notes the authors' claims under article 14 (1) of the Covenant as they relate to the impartiality and fairness of the court proceedings against them. In the absence of any further pertinent information on file, however, the Committee considers that the authors have failed to sufficiently substantiate for the purposes of admissibility those allegations. Accordingly, it declares that part of the communications inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the authors have sufficiently substantiated their claims under article 7, read separately and in conjunction with article 2 (3), and articles 9 (1), 10 (1) and 14 (1) (other than the impartiality and fairness of the court proceedings), 14 (3) (b), (d),

²⁰ The authors refer to paragraph 25 of the general comment.

²¹ [CCPR/C/69/D/770/1997](#) and [CCPR/C/69/D/770/1997/Corr.1](#).

²² See *Sekerko v. Belarus* ([CCPR/C/109/D/1851/2008](#)), para. 8.3; *Protsko and Tolchin v. Belarus* ([CCPR/C/109/D/1919-1920/2009](#)), para. 6.5; *Schumilin v. Belarus* ([CCPR/C/105/D/1784/2008](#)), para. 8.3; *P.L. v. Belarus* ([CCPR/C/102/D/1814/2008](#)), para. 6.2; and *Taysumov et al. v. Russian Federation* ([CCPR/C/128/D/2339/2014](#)), para. 8.5.

(e) and (g) of the Covenant for purposes of admissibility and therefore proceeds with consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claims that they were beaten, suffocated, tortured and forced to confess guilt for crimes they did not commit, and that these confessions were used against them, in violation of their rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant. The Committee notes the authors' contentions that on different dates, they were brought to police stations, where police officers, guards and cellmates took turns in beating them and suffocated them using plastic bags and gas masks. The authors were deprived of food, water, toilet facilities and medical assistance. The Committee notes the authors' allegations that the torture did not stop once they had signed confessions, in which they admitted to participating in the murders, and in some cases, also as a result of torture, named other persons as their accomplices. In fact, the beatings continued, to punish them for killing persons of Kyrgyz ethnicity, as they were told. The Committee also notes that the authors submitted numerous complaints to the prosecutor's office, to the police and to the presiding judge during their trial, but that all their complaints were ignored or rejected. The Committee notes that the State party authorities never initiated a full criminal investigation into multiple allegations of torture, despite detailed descriptions from the authors and instead limited themselves to a preliminary examination (*proverka*) (para. 5.2 above).

7.3 The Committee notes, on the other hand, the State party's brief submission that there was a preliminary examination into the claims of torture, that the victims, their representatives and witnesses were questioned and that the prosecutor's office refused to initiate a criminal investigation due to a lack of *corpus delicti*, a decision that was upheld by courts at all levels, including the Supreme Court of Kyrgyzstan (paras. 4.6–4.7 above). The Committee further notes the State party's contention that the authors' guilt was established by evidence that was examined by the court, including forensic reports. The Committee notes that the State party did not provide copies of those reports, nor their findings, for any of the authors.

7.4 The Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.²³ Although the obligation to bring to justice those responsible for a violation of article 7 is an obligation of means, not of result, 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.²⁴ In that regard, the Committee notes that the State party authorities did not conduct a medical examination of the authors following their complaints of torture and that five of the authors (all except Abdumomin and Muradil Abduvaitov and Bakhodir Zhalalov) provided a report that was conducted by a private psychiatry expert, who concluded that his findings were consistent with the allegations of torture by the authors.

7.5 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the authors of the communication alone, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information,²⁵ especially when the injuries allegedly occur in situations where the authors are detained by the State party authorities. In that regard, the

²³ General comments No. 20 (1992), para. 14, and No. 31 (2004), para. 18. See also *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.6, and *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

²⁴ *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917,1918,1925/2009 & 1953/2010), para. 9.5; and *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.3.

²⁵ Communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, para. 13.3; and No. 84/1981, *Dermitt v. Uruguay*, para. 9.6; and *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.4.

Committee notes the statements from the authors detailing the torture they suffered while in detention. Those claims were brought to the attention of the prosecutor's office and, most importantly, the record reflects that the authors complained to the court about torture, both during the trial and the appellate proceedings, but their claims were either ignored or rejected. The Committee notes therefore that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out effectively, or that any suspects were identified, despite detailed reports from the authors, witness statements and a medical report indicating findings of torture. In the absence of detailed explanations from the State party in this respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated. The Committee also notes that the court used the authors' confessions, among other evidence, in finding the authors guilty, despite their contention made during the trial hearings that they were tortured to elicit those confessions. Accordingly, in the circumstances, the Committee concludes that the facts before it disclose a violation of the authors' rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant.

7.6 The Committee considers the authors' claims under article 9 (1) that upon their initial apprehension they were arbitrarily detained and their arrests not recorded or registered. The authors claim that this was done to enable the police officers to torture them. The State party does not provide any observations regarding these claims. The Committee recalls its general comment No. 35 (2014), according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. The Committee recalls the requirements of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. In the absence of any pertinent explanation from the State party regarding the authors' whereabouts during the time in question, the conditions of their detention and the record of their arrest, the Committee considers that the authors' rights under article 9 (1) of the Covenant were violated.

7.7 With respect to the authors' claims under article 14 (1) of the Covenant, the Committee notes the uncontested facts that the relatives of the defendants, including those of the authors, were not allowed to be present at those hearings. The Committee notes that the State party failed to provide its observations in this regard. The presiding judge during the trial, according to the authors, explained that he could not guarantee the safety of the relatives of the authors (para. 2.10 above). The Committee recalls the statement in its general comment No. 32 (2007) that: "All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly."²⁶ Article 14 (1) of the Covenant acknowledges that courts have the power to exclude all or part of the public "for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". The State party, however, failed to explain why it was necessary to only exclude from the hearings the authors' relatives under one of the justifications contained in article 14 (1), while the relatives of the victims were able to attend. In the absence of pertinent explanations from the State party, the Committee concludes that the State party applied a disproportionate restriction to the authors' rights to a fair and public hearing and that therefore the authors' rights under article 14 (1) have been violated.

7.8 The Committee also examines the authors' claims that their right to have adequate time and facilities for the preparation of their defence were violated. The Committee notes the authors' claims that the isolation facilities and detention centres were overcrowded and did not have sufficient lighting and air to enable them to prepare their defence. Furthermore, the authors claim that on several occasions, relatives of the victims threatened and physically attacked their lawyers inside and outside the courtroom, and that the police and local prosecutors failed to intervene, creating a general sense of fear that is incompatible with the proper execution of a defence lawyer's functions. The Committee notes that the State party did not refute the evidence that, for example, on 12 October 2010, two persons who introduced themselves as relatives of the victims, threatened the lawyers. The Committee further notes that on 15 October 2010, the lawyers publicly refused to participate in court

²⁶ Para. 28.

hearings, fearing for their safety and security. In December 2010, one of the lawyers, N.U.R., was attacked and beaten by representatives of one of the victims (para. 2.8 above). In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the authors' rights under article 14 (3) (b) and (d) of the Covenant.

7.9 The Committee also notes the authors' allegations that their trial was characterized by a number of irregularities, such as the disorder and violence caused by relatives of the victims who were attending the trial. The authors further claim that they were not able to call witnesses on their behalf, as the witnesses who were called were threatened by the relatives of the victims. In that connection, the Committee recalls, in accordance with its long-standing jurisprudence, that article 14 of the Covenant guarantees the right of accused persons to call and question witnesses. That guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.²⁷ The Committee takes note of the fact that the State party failed to provide any information in that regard. In these circumstances and on the basis of the material before it, the Committee concludes that the State party violated the authors' rights under article 14 (3) (e) of the Covenant.

7.10 In view of the findings above, the Committee decides not to examine the authors' claims under article 10 (1) 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 article 7, read alone and in conjunction with article 2 (3), and of articles 9 (1) and 14 (1) and (3) (b) (d), (e) and (g) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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) quash the authors' convictions and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; (b) conduct a prompt and effective investigation into the torture allegations of the authors and to prosecute and punish those found responsible; and (c) provide the authors with adequate compensation for the violations of their rights. 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 if a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

²⁷ General comment No. 32 (2007), para. 39.