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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 3227/2018, No. 3228/2018, No. 3229/2018, No. 3230/2018, No. 3293/2019, No. 3619/2019, No. 3621/2019 and No. 3770/2020^{*}, ^{}**

<i>Communications submitted by:</i>	Momtali Yusupov, Zhalaldin Sadykov, Sirozhidin Moidinov, Kakhramon Mamazhanov, Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbarov and Tazhidin Abdullaev (represented by counsel, Sardorbek Abdukhalilov)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Kyrgyzstan
<i>Date of communications:</i>	10 May and 10 October 2018 (initial submissions) ¹
<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, 27 August 2018, 3, 7 and 11 June 2019 and 2 July 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	15 July 2022
<i>Subject matter:</i>	Torture and mistreatment
<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>Articles of the Optional Protocol:</i>	5 (2) (b)

* 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 María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan,
Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki
Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais,
Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

¹ Supplemented on 6 April 2020.



1.1 The authors of the eight communications, all nationals of Kyrgyzstan, are Momtali Yusupov, Zhalaldin Sadykov, Sirozhidin Moidinov, Kakhramon Mamazhanov, Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbarov and Tazhidin Abdullaev. They claim that the State party has violated their rights under articles 2 (3), 7, 9 (1), 10 (1) and 14 (1) and (3) (b), (d), (e) and (g) of the Covenant. 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 No. 3227/2018, No. 3228/2018, No. 3229/2018, No. 3230/2018, No. 3293/2019, No. 3619/2019, No. 3621/2019 and No. 3770/2020, submitted by the same counsel on behalf of the eight authors, for a joint decision, in view of the substantial factual and legal similarities.

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 ethnic groups took place in the south of Kyrgyzstan. More than 470 people were killed and many properties were destroyed. Most of the victims were members of the Uzbek minority and most of the damaged properties belonged to members of that community. More than 1 million residents fled to Uzbekistan and 300,000 people were internally displaced. A state of emergency with a curfew was imposed by the Kyrgyz authorities from 13 to 22 June 2010. In 2013, the Office of the Prosecutor General of Kyrgyzstan reported that 5,647 criminal cases had been initiated in connection with the events that had taken place in June 2010.

2.2 The criminal prosecutions that followed the events were marked by reports of human rights abuses against detainees and defendants. One of the most prominent cases, in which the defendants reported having suffered from torture and mistreatment, was the so-called SANPA case.² According to the investigators, between 12 and 14 June 2010, a series of events transpired, which began with a group of ethnic Uzbeks starting 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 the drivers and their passengers in the stopped cars. As a result, 16 people were shot dead and nine vehicles were set on fire. On 14 June 2010, Z.H., then the prosecutor of Suzak District, initiated a criminal investigation into the events and an investigation task force was created.

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

(a) On 28 June, at around 8 p.m., three police officers came to Mr. Yusupov's house in the village of Suzak. They told him that the car of the Suzak District police chief had broken down and asked him, since he was a mechanic, if he could take a look. They transported him to a police station in a yellow vehicle.³ There, the officers asked him about participating in the SANPA events. They started cursing at him and one of the police officers suddenly hit him with a police baton. After that, three other officers started to beat him. One of them used the butt of his machine gun to strike the author in his stomach and thighs. The author was handcuffed to a chair and the police officers placed a gas mask over his head in order to suffocate him. He was simultaneously beaten by several police officers in an attempt to force him to confess his involvement in the SANPA events. The author refused to cooperate and, for three to four hours, he was beaten by the police officers. Finally, the author could no longer withstand the pain and signed several pieces of blank paper. He was told that, if he signed a statement, he would be released within five to six days. He therefore signed a statement that was drafted for him in addition to the blank pages. After that, the author was placed in the temporary isolation ward of the police station. The cell did not have any natural light and the lights were always on and, therefore, the author could not tell how long he had spent there;

² The name of the case derives from that of the nearby SANPA cotton processing plant.

³ The author submits that he had been unlawfully held for six hours before his detention was registered.

(b) Before being detained, Mr. Sadykov had worked as a mechanic. On 28 June 2010, he went to get lunch for himself and his co-workers. While waiting for his food, he received a phone call from a person who identified himself as a police officer. The officer said that the author's car matched the description of a vehicle that had been involved in a road accident and that the police needed to take a look. Police officers came to pick up the author and took him to the Suzak District police station.⁴ On the way there, the author was asked to pay 20,000 som to secure his release. The author refused to pay. While the author was at the police station, he saw his colleague, A.T., who was being beaten by police officers. The officers asked the author to remove his shirt and pants and started hitting him, using wooden sticks. The author's nose was broken, several of his teeth were displaced and he could barely see through his swollen eyes. The author was able to remember only the first names of the officers: Kalyk, Inal and Marat. Two additional officers came in and, from the way they spoke, the author realized that they were from Bishkek. One of the police officers pointed at him and accused him of participating in the killing of persons of Kyrgyz ethnicity near the SANPA factory. The author finally understood the reason for his arrest. The police officers called him a "Nazi", a "fascist" and other derogatory terms. Mara, who seemed to be inebriated, flicked ashes from his cigarette into the author's ear and, when he finished smoking, extinguished the cigarette on the author's left ear. The beatings continued, with the police officers using batons to strike the author's feet. Another officer came into the room and demanded \$100,000, promising to release the author. When the author refused, the police officers continued to beat him. One of the reasons for the torture, the author was told, was the fact that he was an ethnic Uzbek. The officers also suffocated the author with a gas mask, placed a police helmet on his head and started hitting him again with sticks and batons. Finally, the author agreed to sign anything to avoid further torture. The police officers promised that he would be sentenced to three or four months of conditional release if he cooperated. The beatings continued after the author was placed in the temporary isolation ward, where he was handcuffed to a chair;

(c) Mr. Moidinov was detained on 21 June 2010, when his car was stopped by several armed persons in military uniforms. They asked for his identification documents and, after checking them, asked him to go with them to the Suzak District police station.⁵ There, the author was asked to write a statement regarding his whereabouts during the SANPA events. In his statement, the author stated that, during the riots, he had taken his mother and sister to a safe location close to the border with Uzbekistan. The police officers read his statement and one of them started shouting at the author, accusing him of lying. At that moment, four or five other police officers, two of them wearing face masks, entered the room and started beating the author. The author's hands and legs were shackled and he was tortured with pliers, batons, sticks and a needle. One of the officers removed one of the author's teeth with the pliers, a needle was forced into the author's stomach and officers extinguished their cigarettes on the author's body. After that, the author was placed in an administrative detention cell, where he was hung from the ceiling, his feet barely touching the ground. An officer hit him, breaking two ribs. He remembered the name of that officer as Maksat. He also remembered other officers' names, including Inom, Rakhim and Kalyk. The author was then placed in the temporary isolation ward of Suzak District, where the torture continued, including with forced submersion into a water tank. After continuous beatings, the author finally agreed to sign a confession to avoid more torture. He was promised that he would be released from the courtroom during his trial. The police officers also threatened to rape his mother and his sister if he did not cooperate. The author finally signed a confession and two blank pieces of paper. Even after signing the confession and a statement that wrongfully implicated other people, the beatings continued;

⁴ The author claims that he had been unlawfully detained for more than four hours (above the allowed time) before his detention was registered.

⁵ The author claims that he had been unlawfully detained for 3.5 hours (above the allowed time) before his detention was registered.

(d) Mr. Mamazhanov was at his house on 22 June 2010, when four police officers asked him to come with them to the Suzak District police station to provide a statement on the hunting rifle that he owned. At the station,⁶ the author was asked about the SANPA events. The author was suddenly hit from behind and fell to the floor, where several officers continued to hit him. The author was forced to remove his shirt and pants and the officers continued to beat him, demanding that he confess to having participated in the SANPA events. The author categorically refused. He stated that, while his house was 300 to 400 m from the SANPA factory, he had not participated in the riots. One of the officers was sent to the author's home to retrieve his hunting rifle. When the officer arrived with his rifle, the beatings continued and the author was accused of being a sniper who had shot people during the riots. The same day, after lunch, the author was further tortured by four men wearing military uniforms. During that time, he was kept handcuffed to a chair, with officers regularly beating him. The author was then placed in a temporary isolation ward, where two officers, Kalyk and Zhyldyz, continued to torture him, beating him and stepping on him with their shoes. The author was taken to the inner yard of the isolation ward, where he was doused with cold water. From the isolation ward, the author was taken back to an office, where he was asked to remove his clothes and was beaten again. Officers put a plastic bag over his head and suffocated him until he lost consciousness. Officer Zhyldyz threatened to shoot the author and then struck him twice with his gun. Finally, the author signed a statement that had been written for him;

(e) After the initial riots of June, the authorities attempted to hold reconciliation talks between Kyrgyz and Uzbek groups. Mr. Saliev participated in one such event on 13 June 2010, which was held with the participation of the district and regional governors. During the event, the participants were informed that the body of an unknown person had been found in a nearby cornfield. The author was asked to help to transport the body to the local morgue and the author agreed. One of the ambulance doctors asked the author and a few other people not to leave and called the police. Several police officers in military uniforms arrived and started beating the author. After that, the author was ordered to help to load the body into the ambulance. The author resisted, but finally helped and stayed in the ambulance on the way to the city of Zhahal-Abad. The author and two others were afraid of being suspected of murder and decided to jump out of the ambulance. The author jumped, hit his head and lost consciousness. When he woke up, he found himself in the Andijon regional hospital in Uzbekistan, where he stayed until 24 June 2010. During his stay, he was visited by the Minister of Health of Kyrgyzstan, Damira Niazalieva, who promised medical assistance if the author returned to his home country. On 24 June 2010, the author and other patients were transferred by ambulance from Uzbekistan hospitals to Kyrgyzstan. When the ambulance crossed into Kyrgyz territory, it was accompanied by several Kyrgyz doctors and police officers. At some point, the ambulance stopped and the author was ordered out. The author, who was holding his bandaged head, was accused of killing Kyrgyz people and was beaten by police officers and lost consciousness. When he came to his senses, he found himself in the Suzak District hospital, where he had to stay for 16 days. On 12 July 2010,⁷ two police officers arrived at the author's hospital room and took him to the Suzak District police station. There, the author was beaten again, which made the wound on his head bleed. The author was then taken to a cell in the temporary isolation ward, where he was beaten again and tortured with a large needle and cigarettes. Despite that treatment, the author refused to sign a confession. Therefore, unlike with the other authors, there is no confession in the case materials nor did the author testify against other defendants. Subsequently, the author was tortured again inside the temporary isolation ward and in the police station;

(f) Mr. Mamadaliev was at his home⁸ on 28 June 2010, when three unknown people entered his yard, handcuffed him without his consent and forced him into a police car.⁹ The author was asked about his participation in the SANPA events and, when he denied that he had been involved, several police officers started beating him. The author remembers

⁶ The author submits that his detention was registered more than 3 hours after he had been detained.

⁷ The author submits that his detention was registered more than 32 hours after he had been detained.

⁸ The author submits that his detention was registered 35 hours after he had been detained.

⁹ The detention of Mr. Mamadaliev was registered more than 35 hours after he had been detained.

some first names, including Altyn, Kalyk and Timur, and the name of the Deputy Chief of Police of the Suzak District, N. Shadykanov. The author was subsequently handcuffed to a pipe in one of the offices, where the beatings continued. When the author again refused to confess to his participation in the SANPA events, the police officers undressed him and one them, Altyn, grabbed his genitalia and demanded that he confess. For several hours, the author was kept naked and handcuffed to the pipe. He was finally taken to a larger meeting room, where a group of about 20 officers asked him to sing the national anthem of Kyrgyzstan. When the author said he that he did not know the words, he was beaten again. The beatings continued afterwards in Timur's office and in the cell for administrative detention, where the author was placed during the night. During the night, the author was taken to one of the offices, where he was asked to sign a confession. In the morning, the torture continued, with police officers using a pair of pliers to remove the nails from two of the author's fingers. The author still refused to sign the documents and the police officers told him that they would simply sign his name. In that statement, it said that the author had committed crimes near the SANPA factory. Some of the other authors of the present joint communication were also implicated in the statement. On 29 June 2010, the author wrote a statement that the signature on the confession was not his. The author had not been given water since his arrest and he was thirsty. His relatives were not informed of his whereabouts. The author continued to be tortured after 29 June 2010, mostly by two officers, Timur and Rakhim, who, during one of the beatings, broke the author's left ear;

(g) On 27 August 2010, Mr. Abduzhabbarov received a phone call and was asked to come to the Suzak police station to make a statement about a stolen item. The author was surprised that police officers would be busy investigating a simple theft during such a difficult time for the country, but the next morning, he decided to go the police station with his father.¹⁰ When he entered one of the offices, a police officer named Kalyk handcuffed him to a pipe on the wall. The officers asked him some questions about the stolen item. Suddenly, their tone changed and they started asking about the SANPA events. They cursed and used pejorative terms for Uzbeks. Another officer, Altyn, came into the room and started beating the author. The author was taken to another room, where he was beaten with police batons. Altyn accused him of killing Kyrgyz people during the riots. He was taken to a temporary isolation ward, suffering from enormous pain. Later, he was taken back to one of the rooms in the police station, where he saw his father. His father had been asked to bring 100,000 som to secure the release of his son. The author was told that if he did not sign the prepared statements, they would bring in his father and beat him in front of the author. The author, concerned for his father's safety, signed all the papers;

(h) On 2 July 2010, four men entered Mr. Abdullaev's house. One of them was a Suzak District police officer. The others introduced themselves as officers of the Suzak District Department of Internal Affairs. They claimed that the author had been involved in a traffic collision on 30 June 2010 and asked him to follow them to the Department of Internal Affairs. Upon arrival,¹¹ he was taken to the office of the Deputy Chief of the Department of Internal Affairs, where he was accused of participation in the riots near the SANPA factory, subsequent murders and other crimes. During the day, the author was beaten several times by different officers. They used ethnic insults and threatened to rape his daughters with a baton if he did not confess guilt in the crimes. The author was taken to a room where he was forced to remove all his clothes. He was humiliated and cigarettes were extinguished on his body. One of the officers put a plastic bag over the author's head and started to strangle him. Later, the officers put a gas mask on him, while blocking the flow of air to the mask. An officer squeezed the author's fingers with pliers. After being beaten, he was taken to a cell, where he lost consciousness due to pain. In the evening, the officers continued to seek his confession, beating him and threatening to kill him for not confessing to the crimes. On 3 July 2010, the author was taken to a room where several police trainees beat him with batons for approximately an hour. Due to the torture, the author signed a page that contained a confession. The beatings continued until the court hearings started on 13 September 2010.

¹⁰ The author claims that his detention was registered more than 11 hours after he had been detained.

¹¹ The author submits that his detention was registered 11 hours after he had been detained.

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 informed 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 all the crimes that they were accused of. The authors complained to the judges that they were being tortured, but the presiding judge did not respond and ordered the detention of all the authors 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 7 m². In such conditions, the authors could not properly prepare for their defence, as there were no desks or lights and there was not enough space. During the detention, the authors were constantly labelled as murderers of Kyrgyz people and felt threatened. The deplorable conditions of detention had been documented previously, including in a report published by the Organization for Security and Cooperation in Europe (OSCE) in 2011.¹² The temporary isolation wards, which should have been used only for a short 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 ward to another, they were given a so-called welcome: a beating by other detainees. The authors asked for medical assistance but those requests were ignored.

2.6 The authors were charged with offences under various articles of the Criminal Code of Kyrgyzstan, such as carrying or the illegal purchase, sale, storage or transportation of firearms (art. 241), murder while committing a crime of violence, causing risk to the life to the person or motivated by ethnic or racial hatred (art. 97) and robbery or the 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). The trial started on 13 September 2010 in the Suzak District Court. Nineteen defendants were brought to trial, including the eight authors of the present joint communication. All of the defendants were Uzbek. More than 40 representatives of the victims were present. The hearings were disrupted by the relatives of the victims and had to be postponed. On 17 September 2010, the hearings were transferred to the Nookan District Court, which has only one courtroom, which can contain 30 people, and a so-called cage, a metal box of 6 m², which was intended to hold all 19 defendants.

2.7 During the trial, all the authors complained to the presiding judge that they had been tortured in order to obtain their confessions, that they had had to sign prepared statements or blank pieces of paper and that some of them could not read or write. The presiding judge dismissed those complaints and the prosecutor did not take the appropriate steps to investigate them. The trial itself suffered from serious procedural irregularities. The victims' representatives and relatives, who were in the courtroom, frequently interrupted the proceedings by shouting, including shouting threats to the authors. The lawyers representing the authors were also physically threatened and received death threats for merely performing their functions. In one instance, the defence lawyers and relatives of victims got into 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 postponement of the hearings.

2.8 On 30 September 2010, following another round of violence in the courtroom, attorneys for the defendants filed a complaint with the Zhalal-Abad Regional Court, which assured them that they would provide a more secure environment for further court hearings. The defence attorneys continued to receive threats to their lives if they continued their work.

¹² Ulugbek Azimov and others, *Torture Prevention in Temporary Detention Facilities under the Ministry of Internal Affairs of the Kyrgyz Republic: Monitoring, Reaction, Rehabilitation* (Bishkek, OSCE, 2011). The authors refer to the following link: www.osce.org/ru/bishkek/93783.

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 District police station, where several police officers physically assaulted the authors. The officers who tortured the authors demanded that they confess 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 due to the size of the courtroom and because, he said, he could not guarantee their safety. With the silent agreement of law enforcement officers, representatives of the victims assaulted the authors' relatives in the Nookan District Court with total impunity. During the trial, the representatives of the victims interrupted the authors and did not allow the authors' lawyers to ask questions or to put forward evidence. The presiding judge did not do anything to stop the behaviour. Several of the authors' relatives were hospitalized with grave injuries.

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

2.12 On 12 October 2010, two unknown people came into the offices of Justice, a non-governmental organization that was representing several defendants and their relatives. The two people said that they were relatives of the victims and demanded that the lawyers representing the authors be "quiet and silent" during the court hearings, otherwise the lawyers would face consequences. They asked the lawyers why they were defending murderers and demanded to have the full names of all the employees and managers of Justice. On 14 October 2010, shortly before a hearing scheduled for that date, the Justice lawyers received threats relating to their role. They reported the threats to the Office of the Prosecutor 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 continued to receive threats, however, and were prevented from performing their functions. On 15 October 2010, during a press conference in the city of Osh, the 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 the constant pressure from victims and their supporters.

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

2.14 On 23 November 2010, the authors were found guilty of the charges and were sentenced to life imprisonment and the confiscation of their properties. On 9 March 2011, the Zhalal-Abad Regional Court denied all the motions to question additional witnesses during the appellate proceedings and upheld the lower court's decision. 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 upheld the lower court's decision, also copying it verbatim. For example, the error of charging the authors under article 97 of the Criminal Code several times was repeated in the decisions of 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 that they did not commit.

The torture included beatings, suffocation and other forms of physical and mental torture. Three of the eight authors, Mr. Mamazhanov, Mr. Moidinov and Mr. Yusupov, provide a medical certificate, signed by an expert in forensic psychiatry, T.K. Asanov. The expert had concluded that his findings were consistent with the torture alleged by the authors. The authors also provide detailed statements describing the treatment that they had suffered.

3.2 Furthermore, the State party failed to conduct an impartial and effective investigation into the claims of torture, as required by the jurisprudence of the Committee. Despite the authors' complaints during the court hearings and their requests for investigation addressed to the Office of the Prosecutor, the State party failed to take any action, 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 they were apprehended but that their detention was not formalized or registered for hours or even days. That was done in contravention of article 95 of the Criminal Procedure Code, which requires registration within three hours of the initial apprehension. The registration was delayed to allow time for police officers to torture the authors. During the detention hearing, 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 make any arguments to defend their clients.

3.4 The authors' conditions of detention violated their rights under article 10 (1) of the Covenant. The authors claim that they were detained for several months without proper medical care. In their cells, there was no sufficient light or air. In violation of the Covenant, the authors shared their cells with other persons who had already been convicted of a crime. They were kept in temporary isolation wards that were intended to keep detainees for only a few hours, not months. There were no proper sanitary and hygienic conditions in the cells, as the toilet was not separated from the rest of the cell. 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 of the defendants were threatened by the 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, consult with the authors and so on, in violation of their rights under article 14 (1). The court hearings were closed to the public, including to the authors' relatives, although the court did not adopt any formal decision 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 reasons of threats and assaults against the authors, their lawyers and the relatives of the authors.

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

3.7 The authors' confessions, which were obtained through torture, were used against them to prove their guilt, in violation of article 14 (3) (g) of the Covenant. Because of the physical and mental torture, threats to their immediate families and other relatives and threats and beatings by police officers and some cellmates, the authors submit that they were willing to sign anything that 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 article 14 (3) (e) of the Covenant. Understanding that that right is limited, the authors nevertheless submit that the court refused to call witnesses that would have established their innocence. The authorities also claimed that such witnesses could not be called because they had been threatened and that their safety could not be guaranteed.

3.9 The authors ask the Committee to find violations of all of the articles of the Covenant that they have put forward and to direct the State party to provide the authors with an effective remedy and full compensation for the violations suffered, to take steps to secure their release and to quash their verdicts and sentences and, if necessary, to conduct a new trial upholding all fair trial rights, including the presumption of innocence and other procedural guarantees. The authors also request a prompt and impartial investigation by the State party into their allegations of torture and the payment of adequate compensation, including the reimbursement of court fines, fees and other court-related expenses.

3.10 The State party should be requested to create an independent and effective procedure to investigate all allegations of torture, pursuant to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also introduce relevant changes in its Criminal Procedure Code to ensure the effective investigation of torture claims.

State party's observations on admissibility and the merits

4.1 On 14 May 2019, for communications No. 3227-3230/2018, on 25 November 2019, for communications No. 3293/2019, No. 3619/2019 and No. 3621/2019, and on 2 November 2020, for communication No. 3770/2020, the State party provided its observations on admissibility and merits.

4.2 The State party submits that, on 12 and 13 June 2010, near the SANPA cotton-processing plant in Suzak village, a group of people of Uzbek ethnicity blocked part of the highway from Bishkek to Osh. The people, armed with firearms, explosive substances in glass bottles, wooden sticks and metal objects, burned and destroyed 11 cars and, in the process, shot the drivers and passengers of the vehicles.

4.3 As a result, the unidentified bodies of five males, and two females were brought to the Zhalal-Abad regional hospital's morgue. On 14 June 2010, the Suzak District police initiated a criminal investigation into the events. On 15 June 2010, another body was found, that of Z.T.O., who had been 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. On 15 June 2010, the police identified and detained one of the suspects, A.Y., who had a knife and cartridges in his possession. That person was subsequently charged under various articles of the Criminal Code of Kyrgyzstan, including articles 97 (murder), 174 (purposeful destruction of someone's property) and 241 (illegal possession of firearms).

4.4 On an unknown date, those criminal investigations were combined into one and several other suspects were detained, including Mr. Yusupov, Mr. Sadykov, Mr. Moidinov, Mr. Mamazhanov, Mr. Saliev, Mr. Mamadaliev, Mr. Abduzhabbarov, Mr. Abdullaev and others. On the basis of a court decision, they were all detained pending trial and, on 16 July 2010, their criminal case was sent to the Suzak District Court for trial.

4.5 On 23 November 2010, Mr. Abduzhabbarov was sentenced to 25 years of imprisonment and all the other authors were sentenced to life imprisonment. By the appellate decision of the Zhalal-Abad Regional Court, dated 9 March 2011, the first instance court's decision was modified in part and Mr. Abduzhabbarov was also sentenced to life imprisonment. The rest of the verdicts and sentences remained unchanged. By its 21 June 2011 decision, the Supreme Court of Kyrgyzstan upheld the lower court's decision. It must be noted that Mr. Moidinov failed to submit his complaint under a supervisory review procedure.

4.6 The State party submits that the guilt of all of the authors was established by evidence, such as the crime scene investigation, the examination of the vehicles, bodies and other items, the identification of witnesses and the testimonies of 21 victims, two representatives of victims and 18 witnesses. In addition, the authorities conducted forensic, chemical, biological and criminalistics examinations and provided other indisputable evidence. During the investigation, the criminal cases of several of the defendants were separated into a different criminal investigation due to the fact that those persons could not be located.

4.7 Two years and six months after Mr. Sadykov's arrest, his wife, L.K.A., brought a complaint claiming that, in June 2010, her husband had been subjected to "unauthorized methods of inquiry and investigation", such as beatings, unlawful detention and forcing the author to confess. On 28 June 2013, after a preliminary examination, the Suzak District Office of the Prosecutor refused to initiate a criminal investigation. Three years and eight months after their initial detention, Mr. Mamazhanov, Mr. Moidinov and Mr. Yusupov filed a complaint claiming that they had been beaten and forced to provide a confession. The same Suzak District Office of the Prosecutor decided not to initiate a criminal investigation into those claims by a decision dated 14 February 2014. That decision was upheld by the Suzak District Court, the Zhalal-Abad Regional Court and the Supreme Court of Kyrgyzstan.

4.8 On 29 May 2014, a lawyer for Mr. Abduzhabbarov, Mr. Mamadaliev and Mr. Saliev filed a complaint, alleging that several crimes had been committed against them by law enforcement agents. Those claims were examined under a preliminary examination procedure and rejected on 6 June 2014. That decision was upheld by the Suzak District Court, the Zhalal-Abad Regional Court and the Supreme Court of Kyrgyzstan.¹³ On 7 May and 2 October 2019, the Supreme Court decided to reconsider the criminal cases of Mr. Abduzhabbarov, Mr. Mamadaliev and Mr. Saliev. Its verdict and the sentences were left unchanged, however.

4.9 Regarding Mr. Abdullaev, the State party submits that the author did not complain about torture during the court proceedings, did not admit guilt and testified that he had been under the influence of alcohol and therefore did not remember anything but that he had not participated in anything unlawful. Four years after his initial detention, on 26 May 2014, the author filed a complaint, which was rejected on 6 June 2014. The State party authorities conducted a preliminary investigation and contacted the detention centres where the author had been held but did not find evidence that the author had asked for medical assistance due to beatings. The decision was upheld by the courts, the last decision being that of the Supreme Court on 14 September 2015. The State party claims that the author complained about torture four years after the fact to exonerate himself and to avoid serving his sentence.

4.10 The State party submits, however, that under the Constitution of Kyrgyzstan and article 384 of the Criminal Procedure Code, the authors failed to file a supervisory review complaint to the Supreme Court. Under the provisions of those articles, the authors had a right to bring a complaint on the verdicts and sentences that had come into force, under various circumstances, such as violations of rules for gathering evidence, unlawful actions or the inaction of the investigators, prosecutors or judges and circumstances that indicate that the authors are innocent. Due to the fact that such supervisory review 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 On 24 September 2019, for communications Nos. 3227–3230/2018, and 19 February 2021, for communications No. 3293/2019, No. 3619/2019, No. 3621/2019 and No. 3770/2020, the authors responded to the State party's observations on admissibility and the merits of their communications and reiterate their previously stated claims.

5.2 The authors submit that the State party failed to conduct an effective investigation into their claims of torture, as required by the Committee under its jurisprudence. The authorities of the State party limited themselves to taking statements from police officers of the Suzak District police, who stated that they did not use torture. The Office of the Prosecutor did not conduct a forensic or psychological examination, which would have identified the acts of torture. The authorities of the State party must make serious attempts to establish the truth and cannot prematurely stop an investigation before identifying the perpetrators. Any

¹³ On 18 November 2014, the Zhalal-Abad Regional Office of the Prosecutor reopened the preliminary investigation but, on 5 December 2014, again refused to initiate a criminal investigation, a decision that was upheld by the courts.

deficiency in investigating claims of torture may result from a lack of thoroughness in the investigation.¹⁴

5.3 The State party does not respond to any allegations regarding the inhumane and degrading conditions of the authors' detention. The national legislation establishes the conditions of detention, which include hygiene and fire safety requirements, individual beds, nutrition and ventilation. It is also required that the cells provide space of not less than 3.25 m² per detainee. The detention of the authors in the temporary isolation wards of the Suzak and Nookan districts violated their right to be free from inhumane treatment. The authors could not complain about the conditions of their detention while they were detained due to the hostile attitude of the administration of those wards.

5.4 The State party also fails to respond to the detailed claims of the authors under article 14 of the Covenant regarding the continuing torture of the authors, the threats against them and the violence and threats against their relatives and lawyers. Furthermore, the authors could not call witnesses on their own behalf and could not cross-examine the witnesses against them.

5.5 The State party further fails to respond to the allegations that the authors were held unlawfully. The jurisprudence of the Committee states that a detainee can be held only pursuant to a lawful court order, in accordance with a procedure established by law. During the pretrial detention, the authors did not have proper facilities and time to meet with their lawyers and prepare for their defence.

5.6 The authors properly filed complaints concerning torture to the Office of the Prosecutor. When the Office refused to initiate a criminal investigation into the allegations of torture, those decisions were challenged in court. The district and regional courts and the Supreme Court all sided with the Office and upheld its decision. The authors, therefore, have exhausted all available and effective domestic remedies.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with 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 on the grounds that the authors did not exhaust the available domestic remedies in that they failed to file a supervisory review complaint. In that connection, the Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions which 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.¹⁵ 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

¹⁴ The author refers to European Court of Human Rights, *Assenov et al. v. Bulgaria*, Application No. 24760/94, Judgment, 28 October 1998.

¹⁵ *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *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/2339/201), para. 8.5.

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 fail 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) and (3) (b), (d), (e) and (g) of the Covenant for the purposes of admissibility and therefore proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee notes the authors' claims that they were beaten, suffocated, tortured and forced to confess guilt for crimes that they did not commit and that those confessions were used against them, in violation of their rights under article 7, read alone and in conjunction with article 2 (3), and under article 14 (3) (g) of the Covenant. The Committee also notes the authors' contention that, on different dates, they were brought to police stations, where police officers, guards and cellmates took turns beating them and suffocated them using plastic bags and gas masks. The authors were deprived of food, water, access to sanitation and medical assistance. The Committee further notes the authors' allegations that the torture did not stop once they had signed the confessions, in which they admitted to having participated in the murders and, in some cases, also as a result of torture, named other persons as their accomplices. In fact, the beatings continued in order to punish them, they were told, for killing persons of Kyrgyz ethnicity. The Committee notes that the authors submitted numerous complaints to the Office of the Prosecutor, the police and the presiding judge during their trial, but that all of those complaints were ignored or rejected. The Committee also notes that the State party authorities never initiated a full criminal investigation into the multiple allegations of torture, despite detailed descriptions from the authors, instead limiting themselves to a preliminary examination (see para. 4.7 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, that the Office of the Prosecutor refused to initiate a criminal investigation and that the decisions were upheld by courts at all levels, including the Supreme Court of Kyrgyzstan. The Committee also notes the State party's contention that the authors' guilt was established by evidence, including forensic reports, that was examined in court. The Committee further 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.¹⁶ Although the obligation to bring to justice those responsible for a violation of article 7 is an obligation of means, not of result,¹⁷ 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 agents.

¹⁶ General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; general comment No. 31 (2004), para. 18; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.6; and *Khalmamatov v. Kyrgyzstan*, para. 6.4.

¹⁷ *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917,1918,1925/2009 & 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3.

In that regard, the Committee notes that the authorities of the State party did not conduct a medical examination of the authors following their complaints of torture and that three of the authors, Mr. Mamazhanov, Mr. Moidinov and Mr. Yusupov, provided the report of an examination conducted by a private psychiatrist, who had concluded that his findings were consistent with the torture allegations made by the authors. The Committee also notes that all the authors provided written statements describing in detail the torture that they had suffered, indicating the names of the police officers who had allegedly inflicted the torture.

7.5 The Committee recalls that the burden of proof concerning factual questions cannot rest with 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, only the State party has access to relevant information,¹⁸ especially when the injuries allegedly occurred while the authors were detained by the authorities of the State party. In that regard, the Committee notes the statements of the authors detailing the torture that they suffered while in detention. Those claims were brought to the attention of the Office of the Prosecutor and, most importantly, the record reflects that the authors had complained about torture in court, during both the trial and the appellate proceedings, but that their claims had been 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 the detailed reports from the authors, witness statements and the detailed report indicating findings of torture. In the absence of detailed explanations from the State party in that respect, due weight must be given to the authors' allegations, provided that 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 had been tortured to elicit those confessions. Accordingly, in the light of such 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 Next, the Committee considers the authors' claims under article 9 (1) that, upon their initial apprehension, they were arbitrarily arrested and detained, since their arrest was neither recorded nor registered. The authors claim that that was done to enable the police officers to torture them. The State party does not provide any observations regarding those claims. The Committee recalls its general comment No. 35 (2014) on liberty and security of person 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 requirement of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. In the absence of any pertinent explanation from the State party regarding the authors' whereabouts and status during the time in question, the conditions of their detention and the record of their arrests, 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 the hearings. The Committee also notes that the State party fails to provide its observations in that 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 (see para. 2.10 above). The Committee recalls the provisions set out in paragraph 28 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. It is acknowledged in article 14 (1) of the Covenant 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.¹⁹

¹⁸ *Lewenhoff and de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3; *Dermitt v. Uruguay*, communication No. 84/1981, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4.

¹⁹ General comment 32 (2007), para. 29.

The State party, however, fails to explain why it was necessary to exclude from the hearings only 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 on the authors' right to a fair and public hearing and that, therefore, the authors' rights under article 14 (1) were 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 was violated. The Committee notes the authors' claims that the isolation wards and detention centres were overcrowded and did not have enough lighting or air to enable the preparation of their defence. Furthermore, the authors claim that, on several occasions, relatives of the victims threatened and physically attacked their lawyers inside and outside of the courtroom and that the police and local prosecutors failed to intervene, creating a general sense of fear incompatible with the proper execution of a defence lawyer's functions. That is further established by the unrefuted events of 12 October 2010, when two persons, who introduced themselves as relatives of the victims, threatened the lawyers. Such threats continued on 14 October 2010 (see para. 2.12 above). The Committee notes that, on 15 October 2010, the lawyers publicly refused to participate in the court hearings out of fear for their safety and security. 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 several irregularities, such as disorder and violence caused by the relatives of victims attending the trial. The authors also claim that they were not able to call witnesses on their own 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.²⁰ The Committee takes note of the fact that the State party fails to provide any information in that regard. In the light of those 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 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. That requires it to make full reparation to individuals whose rights under the Covenant have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps: (a) to quash the authors' convictions and, if necessary, to conduct a new trial, in accordance with the principles of fair hearings, the presumption of innocence and other procedural safeguards; (b) to conduct a prompt and effective investigation into the authors' allegations of torture and to prosecute and punish those found responsible; and (c) to 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

²⁰ *Ibid.*, para. 39.

rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.
