



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March -3 April 2009

VIEWS

Communication No. 1163/2003

<u>Submitted by:</u>	Ms. Umsinai Isaeva (not represented by counsel)
<u>Alleged victims:</u>	Mr. Abror Isaev (the author's son) and Mr. Nodirbek Karimov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	20 February 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 20 February 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	20 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial with resort to torture during preliminary investigation.

Substantive issue: Torture; forced confession; unfair trial.

Procedural issues: Evaluation of facts and evidence; substantiation of claim

Articles of the Covenant: 6; 7; 9; 10; 14; 16

Articles of the Optional Protocol: 1; 2: 5, paragraph 2 (a)

On 20 March 2009, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1163/2003.

[ANNEX]

ANNEX

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

Ninety-fifth session

concerning

Communication No. 1163/2003**

<u>Submitted by:</u>	Ms. Umsinai Isaeva (not represented by counsel)
<u>Alleged victims:</u>	Mr. Abror Isaev (the author's son) and Mr. Nodirbek Karimov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	20 February 2003 (initial submission)

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

Meeting on 20 March 2009,

Having concluded its consideration of communication No. 1163/2003, submitted to the Human Rights Committee on behalf of Mr. Abror Isaev and Mr. Nodirbek Karimov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

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

1.1 The author of the communication is Ms. Umsinai Isaeva, an Uzbek national born in 1956. She submits the communication on behalf of her son, Mr. Abror Isaev, and of an acquaintance of her son, Mr. Nodirbek Karimov, both Uzbek nationals born in 1984 and 1980, respectively. At the time of submission of the communication, both alleged victims were on death row, after having been sentenced to capital punishment, on 23 December 2002, by the Tashkent Regional Court. The author claims that Mr. Isaev and Mr. Karimov are victims, by Uzbekistan, of their

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

rights under article 6; article 7; article 9; article 10; article 14, paragraphs 1, 2, 3; and article 16, of the International Covenant on Civil and Political Rights. The author is unrepresented by counsel.

1.2 In her initial submission, the author has not provided a power of attorney to act on Mr. Karimov's behalf. She was requested to present a written authorisation from Mr. Karimov, but no such document was ever received and no explanation was provided in this connection¹.

1.3 While registering the communication, on 20 February 2003, and pursuant to Rule 92 of its rules of procedures, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to execute the death penalties of the alleged victims while their communication is under consideration. On 25 May 2004, the State party informed the Committee that on 16 April 2004, the Supreme Court of Uzbekistan had commuted Mr. Isaev's and Mr. Karimov's sentences to 20 years of imprisonment.

The facts as submitted by the author

2.1 In her initial submission, the author contends that her son and Mr. Nodirbek Karimov were both sentenced to the capital punishment on 23 December 2002 by the Tashkent Regional Court, while their two other co-defendants, Mr. Rustamov and Mr. I. Karimov (Mr. Nodirbek Karimov's brother) were sentenced to 20 years' prison term. The sentence was confirmed on appeal by the appeal body of the Tashkent Regional Court on 19 February 2003. The author's son and Mr. Nodirbek Karimov were found guilty of having murdered, in a particularly violent manner, on 24 May 2002, two individuals, Mrs. M. Mirzokhanova and Mr. R. Mirzokhanov, and of having robbed them.

2.2 According to the author, the court was biased, and based its decision on the confessions obtained by the alleged victims under torture during the preliminary investigation. The author adds, without providing further details, that all complaints filed in connection with the bias and the use of torture on behalf of the alleged victims, both during the preliminary investigation and the court trial, remained without answers.

The complaint

3. The author claims a violation of the alleged victims' rights under article 6; article 7; article 9; article 10; article 14, paragraphs 1, 2, 3; and article 16, of the Covenant.

State party's observations

4. On 31 March 2003, the State party noted that on 23 December 2002, the Tashkent Regional Court found Mr. A. Isaev and Mr. N. Karimov guilty under articles 97 and 164 of the Uzbek Criminal Code and sentenced them to death penalty. On 19 February 2003, the appeal body of the Tashkent Regional Court confirmed the sentence. The case was also examined by the Supreme Court, which, on 20 March 2003 upheld Mr. A. Isaev's and Mr. N. Karimov's

¹ Please note that for that reason, the Committee declares the Communication inadmissible as far as it relates to Mr. Karimov (see paragraph 8.3).

sentences. The courts found that the alleged victims had murdered, under aggravating circumstances, R. Mirzakhanov (born in 1971) and M. Mirzokhanova (born in 1972). The guilt of Mr. A. Isaev and Mr. N. Karimov was fully established and their acts were duly qualified. When determining their sanctions, the courts had taken into consideration the gravity of the acts committed.

Author's comments on the State party's observations

5.1 The author made further submissions on 5 July and 24 November 2003. According to her, her son did not commit the murder of which he was convicted. He was beaten and tortured by investigators and thus forced to confess guilt. In her view, her son's sentence was particularly severe and unfounded and his penalty did not correspond with his personality. He was positively assessed by his neighbours and documents to this effect were submitted to the court. He had no previous convictions.

5.2 According to the author, her son presented himself to the police to report the crime, explaining that he did not take part in the murder. However, he was arrested immediately and beaten by the police, to the point that he had cut his wrists and had to be hospitalised. However, after his stabilisation, the beatings and tortures resumed. The author contends that she witnessed how an investigator called "Nariman" was beating her son at the police station. She complained about this to the Office of the President, the Parliament, and to the Tashkent Region Prosecutor. However, all her complaints were referred to the same service against which she was complaining. Mr. Nodirbek Karimov, who was not contesting his involvement in the murder, was equally subjected to torture. Mr. Isaev's forced confessions were later taken into account by the court, notwithstanding the 1996 Supreme Court's ruling that evidence obtained through unauthorised methods of investigation was inadmissible.

5.3 According to the author, the courts have wrongly concluded that the murder was committed with a particular violence. The author also claims that the courts did not clarify who, among all the co-accused, had taken the initiative in committing the murder, and did not establish what their respective roles in the crime were.

5.4 The author also challenges the courts conclusion that her son had committed the murder guided by selfish motivations. In court, Mr. Isaev had explained that during the murder, he was in a state of deep emotion and did not realise what he was doing; he did not steal anything but the items were taken in order to simulate a robbery.

5.5 The court allegedly did not take into account the fact that immediately prior to the murder, her son was provoked by Mr. and Mrs. Mirzakhanov, who were humiliating and blackmailing his sister. This should have been considered as a mitigating circumstance.

5.6 The author also claims that the court, in determining her son's sentence, had ignored a Ruling of the Supreme Court of 20 December 1996, according to which although the death penalty is provided by law, it is not mandatory.

5.7 According to the author, the investigation and the courts have violated the alleged victims' right to be presumed innocent. The existing doubts in relation to the crime did not benefit the accused.

5.8 The author further contends that the courts examined the case superficially and in a biased manner. Pursuant to article 23 of the Uzbek Criminal Procedure Code, it is not incumbent on the accused to prove his/her innocence, and any remaining doubts are to his/her benefit. The court, however, did not comply with these principles in her son's case. The sentence was based on indirect evidence collected by the investigators that could not be confirmed in court, whereas evidence that could establish Mr. Isaev's innocence was lost during the investigation. In particular, the author contends that if her son was accused of having stabbed the victims with a knife, his hair, hands, and clothes should have disclosed blood marks. However, no expert's examination of his hair, hands, or of the substance under his nails was ever carried out and the knife was not discovered.

5.9 The author reiterates that the investigation was carried out in an unprofessional manner. The courts endorsed all the errors committed, and pronounced an unlawful sentence. In addition, the courts did not find mitigating circumstances in the case of her son, notwithstanding the fact that he was never sentenced before. In addition, the courts disregarded a ruling of the Supreme Court, according to which in death penalty cases, courts must take into account all circumstances of the crime, as well as extensive data on the personality of both accused and victims.

5.10 The author visited her son on death row in April 2003 and found him in a poor health condition. She was told that he had attempted to commit suicide and was under psychotropic treatment since then. As a consequence, he did not recognize her. He was examined by a psychiatrist, who concluded that he was suffering from an "astenophobic syndrome of reactive character, with a mutation". According to the author, her son could not receive adequate treatment in prison and should be held in a psychiatric hospital². The author complained to different instances and requested to have her son hospitalised, without success³.

² On 3 May 2003, Mr. Isaev's lawyer submitted a request about his client's health status to the prison in Tashkent where his client was held. By letter of 8 May 2003, the Head of the prison informed the lawyer that Mr. Isaev has not presented any complaints on his health status. On 30 March 2003, he had stopped talking, and was examined by the psychiatric expert of the prison's medical unit. The diagnosis was: astenophobic syndrome of reactive character, with a mutation. Mr. Isaev was following a treatment with neuroleptics. According to the Head of the prison, the prison's medical unit is not in a position to order a medical –forensic psychiatric examination of the detainee, as such examinations are ordered by the prosecutor's office or by the courts. On 13 and 23 May 2003, the author complained about the health status of her son with the Department on the Execution of Penalties (Ministry of Internal Affairs). On 13 June 2003, she received a reply, signed by the Deputy Head of the Department, who informed her that her son was placed under constant observation of the medical psychological personnel of the Medical Unit of the penitentiary institution where he is held, and he was administered medical assistance. His health status was ameliorating, and no hospitalisation was needed.

³ The author explains in particular that on 27 July 2003, she received a reply from the Chief of the Tashkent prison, according to which her son was ill, and his diagnosis was "Reactive mutation. Aggravation?" Neuro-circulative dystonia. Need to pass a psychiatric experts' examination, at the court's request". According to the author, in a reply to a further letter, she was informed, on 4 September 2003, by the Chief of the prison, that her son's health status had deteriorated.

Additional information from the parties

6. The State party presented a further submission on 11 July 2003. It repeats its previous explanations and adds that the alleged victims' execution was stopped pending the examination of their requests for Presidential pardon. The alleged victims were detained in accordance with the provisions of Code of the Execution of Criminal Penalties, and their relatives were regularly given the right to visit them in prison.

7.1 In another submission dated 11 December 2003, the State party explained, with reference to the Committee's request under rule 92 of its rules of procedure, that it had taken measures not to have the executions of Messrs Karimov and Issaev carried out, pending the consideration of their communication.

7.2 On 25 May 2004, the State party informed the Committee that on 16 April 2004, the Supreme Court of Uzbekistan had commuted Mr. Isaev's and Mr. Karimov's sentences to 20 years of imprisonment.

7.3 The author was provided with a copy of all State party's submissions, and was invited to comment on them. Several reminders were addressed to her, with no result. In a reply, dated 6 March 2008, the author informed the Committee that her son was detained in the penitentiary colony No. 64/72, his health status and situation were "bad", there were no "normal" jobs there, and he was receiving a very small salary.

Issues and proceedings before the Committee

Consideration of the admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement. It also notes that the State party has not contested that domestic remedies have been exhausted.

8.3 The Committee notes that the author submitted the communication initially on behalf of her son, and on behalf of her son's co-defendant and acquaintance, Mr. Karimov. It also notes that no written authorization was presented by the author to act on Mr. Karimov's behalf neither in her initial submission nor at a later stage, despite the fact that she was specifically requested to do so, and no explanation was provided to the Committee on this particular issue. In the circumstances, and as far as it relates to Mr. Karimov, the Committee considers that the communication is inadmissible under article 1 of the Optional protocol.

8.4 The Committee notes the author's claims that her son's rights under articles 9 and 16, of the Covenant, have been violated. However, she does not provide sufficient information to illustrate her claims in this respect. Accordingly, this part of the communication is deemed inadmissible,

as insufficiently substantiated for purposes of admissibility, under article 2 of the Optional Protocol.

8.5 The Committee has further noted the author's allegation, which may raise issues under article 10 of the Covenant, on the aggravation of the health status of her son following his imprisonment. It notes that the State party has not commented on this particular issue. However, in the absence of more detailed explanations as to the steps taken in order to exhaust domestic remedies on this particular issue, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated under articles 2 and 5, paragraph 2 (b) of the Optional Protocol.

8.6 The Committee has noted that the author's allegations about the manner in which the courts handled her son's case, assessed evidence, qualified his acts, and determined his guilt, may raise issues under article 14, paragraphs 1 and 2, of the Covenant. It observes, however, that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice⁴. In the present case, the Committee considers that in the absence in the case file of any court records, trial transcript, or other pertinent information which would make it possible to verify whether the trial in fact suffered from the defects alleged by the author, this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

8.7 The Committee considers that the author's remaining allegations, which appear to raise issues under article 6; article 7; and article 14, paragraph 3 (g), of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

9.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

9.2 The author has claimed that her son was beaten and tortured by investigators and was thus forced to confess guilt in the murder; the author provides the name of one of the investigators who allegedly had beaten her son. The author also contended, and this was not refuted by the State party, that her son's explanations in this respect were not taken into account, and his initial confessions were used by the court in determining his role in the crime. The Committee recalls that once a complaint against ill-treatment contrary to article 7 is filed, a State party is duty bound to investigate it promptly and impartially⁵. In this case, the State party has not specifically, by way of presenting the detailed consideration by the courts, or otherwise, refuted the author's allegations nor has it presented any particular information, in the context of the present communication, to demonstrate that it conducted any inquiry in this respect. In these circumstances, due weight must be given to the author's allegations, and the Committee

⁴ See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

⁵ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

considers that the facts presented by the author disclose a violation of her son's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

9.3 The Committee recalls its jurisprudence to the effect that the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant⁶. In the present case, however, Mr. Isaev's death sentence imposed on 23 December 2002, confirmed appeal on 19 February 2003, was commuted on 16 April 2004, by the Supreme Court of Uzbekistan. Accordingly, the Committee considers that in the particular circumstances of the present case, the issue of the violation of the author's son's right to life has thus become moot⁷.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the author son's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Isaev with an effective remedy, including compensation and initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and his re-trial. The State party is also under an obligation to prevent similar violations in the future.

12. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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

⁶ See, for example, *Roza Uteeva v. Uzbekistan*, Communication No. 1150/2003, Views adopted on 26 October 2007, paragraph 7.4.

⁷ In this respect, see for example *Larisa Tarasova v. Uzbekistan*, Communication No. 1057/2002, Views adopted on 20 October 2006.