

INTERNATIONAL COMMISSION OF JURISTS

**CASES DECIDED BY THE UN HUMAN RIGHTS COMMITTEE CONCERNING THE ALLEGATION OF TORTURE
AND OTHER FORMS OF ILL-TREATMENT (ARTICLES 7 AND 10)**

A COMPILATION AND ANALYSIS OF VIEWS

TAJIKISTAN

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**USE OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN TAJIKISTAN: A
COMPILATION OF UN HUMAN RIGHTS COMMITTEE CASES**

Introduction

Tajikistan, along with 172 other States, is a party to the International Covenant on Civil and Political Rights (ICCPR or “the Covenant”), which protects a wide range of human rights. Among the rights guaranteed under the ICCPR are the freedom from torture and other cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR) and the right of detained persons to be treated with humanity and dignity (Article 10 ICCPR).¹ These rights are intrinsically linked with other rights including the right to liberty (article 9 ICCPR), the right to a fair trial (Article 14 ICCPR), as well as the obligation of the State to give effect to the rights without discrimination under the Covenant and provide effective remedies and reparation where these rights are violated (ICCPR Article 2).

In its third Periodic review issued in 2019,² the UN Human Rights Committee (HRC), a specialised body which monitors the implementation of the Covenant³, commended the amendment to the Code of Criminal Procedure in 2016 and the increase in the penalty for torture, and pointed to the outstanding instances of torture or ill-treatment of persons deprived of their liberty,⁴ and condemned the admission of evidence obtained under torture by domestic courts, despite such evidence being inadmissible in law.⁵ It noted the absence of an independent mechanism to investigate all allegations of torture or ill-treatment and the low number of investigations and prosecutions (arts. 2 and 7).⁶ The HRC made specific recommendations to adequately train law enforcement officials, ensure the inadmissibility of confessions obtained under torture in practice and ensure that all allegations are promptly and thoroughly investigated leading to prosecutions of responsible and effective remedies provided for torture victims and their families.⁷

With regard to treatment of prisoners, overcrowding and poor material conditions as well as the lack of adequate medical care, while tuberculosis and HIV/AIDS are highly spread among inmates,⁸ and even more harsh conditions for those sentenced to life imprisonment through a special prison regime⁹ were pointed out. Other issues highlighted were the reported use of three secret punishment cells in detention facilities in Dushanbe and Khujand for physical abuse and humiliating treatment of some prisoners, as well as reported hindrance of access to the prison facilities of the Ombudsman Monitoring Group and the International Committee of the Red Cross (ICRC).¹⁰

With this in view, the Committee recommends that Tajikistan addresses these problems by, inter alia, increasing resort to non-custodial alternative measures to detention and its efforts

¹ Status of ratifications, International Covenant on Civil and Political Rights, available at <http://indicators.ohchr.org/>, last accessed on 7 August 2019.

² State Parties to the ICCPR must undergo periodic review by the UN Human Rights Committee (thereafter, “the Committee” or “HRC”).

³ ICCPR, Article 28.

⁴ Concluding observations on the third periodic report of of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 31 (a).

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstnmpI5Eibm%2bRnl3Df%2bMS62Ddwef9ujHxzqtw1VP52gDwO3l661HhKqCb3C3u87Jw5fDvDBXj1NpwbYXwRMjDejcM3Hl6r7kBW%2fSIBEMt>. In particular, this concerns ill-treatment for the purposes of extracting confessions, including against human rights defenders and political opponents, as in the cases of members of the banned Islamic Renaissance Party Mahmadali Hayit and Rahmatullo Rajab, and of Zayd Saidov.

⁵ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 31 (b).

⁶ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 31 (c).

⁷ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 32 (a)-(c).

⁸ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 33 (a).

⁹ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 33 (c); see CAT/C/TJK/CO/3.

¹⁰ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 33 (b), (d).

to improve the material conditions and the treatment of lifetime prisoners are in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹¹ Additionally, any secret punishments facilities have to be abolished and access of monitor facilitated.¹²

While Tajikistan regularly reports under the Committee and receives recommendations as the ones mentioned above, it has also acceded to the First Optional Protocol to the ICCPR, which gives the UN Human Rights Committee competence to examine individual communications (complaints) with regard to alleged violations of the ICCPR by the State.¹³ In adjudicating such complaints, the Human Rights Committee issues “views” analysing the facts of the case and determining whether there has been a violations of the Covenant rights. These views, although not strictly judicial decisions, contain authoritative interpretations of the State’s international law obligations under the ICCPR.¹⁴ They also prescribe remedial measures, including reparation, that States should provide to the victim in case violations are found.

The Human Rights Committee’s Rules of Procedure set out a framework in which the Committee operates and, in particular, considers communications and submissions.¹⁵ The procedure for the examination of individual communications is generally described as “quasi-judicial”.¹⁶ Consideration of cases is based on a procedure which is written and confidential and the oral hearings are rare.¹⁷ A complaint is required to meet admissibility criteria which include among others an assessment of whether it raises issues relating to one of the rights protected by the Covenant. If the admissibility criteria are met, the Committee proceeds with the consideration of the case.¹⁸

Such complaints are an important means for victims of human rights violations to seek a remedy internationally, where they have not been able to obtain redress through the available domestic remedies.¹⁹ The Committee mentioned in its General Comment 33 concerning the obligations of States Parties under the optional Protocol to the ICCPR that:

“The views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument. These views derive their character, and the importance which attaches to them, from the integral role of the Committee under both the Covenant and the Optional Protocol. ... The character of the views of the Committee is further determined by the obligation of States parties to act in good faith,¹⁵ both in their participation in the procedures under the Optional Protocol and in relation to the Covenant itself. A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations. ... (...) In any case, States parties must use whatever means lie within their power in order to give effect to the views issued by the Committee”.²⁰

¹¹ Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 34 (a), (b).

¹² Concluding observations on the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, para. 34 (c), (d).

¹³ Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, Article 1; See also General Comment No 33 The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33, 5 November 2008.

¹⁴ See UN Human Rights Committee, General Comment No 33 The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33, para.11.

¹⁵ Human Rights Committee, Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.11, [revised] 9 January 2019.

¹⁶ Nigel S Rodley, *Integrity of the Person*, in Moeckli, D et al., *International Human Rights Law*, OUP, 2014, p. 381. See also EJIL: Talk!, The Human Rights Committee and its Role in Interpreting the International Covenant on Civil and Political Rights vis-à-vis States Parties, 28 August 2015, <https://www.ejiltalk.org/the-human-rights-committee-and-its-role-in-interpreting-the-international-covenant-on-civil-and-political-rights-vis-a-vis-states-parties/>.

¹⁷ On 8 May 2012, the Committee against Torture held its first oral hearing in *Abdussamatov et al. v Kazakhstan* (4444/2010).

¹⁸ Rules of procedure of the Human Rights Committee, Rules 92, 105. For the more detailed procedure for the individual complaints, see Annex 1.

¹⁹ Human Rights Committee, Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.11, 9 January 2019.

²⁰ Human Rights Committee, General Comment no 33, paras 13, 15 and 20.

In this regard it should be stressed that while the Committee as the specialised body whose competence to consider individual communications has been recognised by the States which have ratified the Optional Protocol, including Tajikistan, it is at the domestic level that the decisions of the HRC should be implemented to remedy the violation of the Covenant established by the Committee.

Views of the Human Rights Committee in respect of Tajikistan

This compilation draws together the views of the UN Human Rights Committee in all individual communications adjudicated on the merits by the Human Rights Committee in respect of Tajikistan, concerning Article 7 and Article 10 of the ICCPR from 1999 to 2019. In all, these amount to 20 cases, in 18 of which the Committee found a violation of the Covenant rights.

This compilation provides a resource for lawyers, judges, civil society and other stakeholders working to protect against torture and ill-treatment in Tajikistan. The cases in this volume demonstrate how the UN Human Rights Committee has applied the principles of its jurisprudence on torture and other ill-treatment to the particular legal and factual context of Tajikistan. These authoritative interpretations of the ICCPR by the Committee can help to inform consideration of these issues in the national courts, as well as in legislative reform and policy making.

In addition, by drawing together and analysing the facts of individual communications to the Committee from Tajikistan, this compilation also serves to identify underlying systemic issues which Tajik authorities and the national justice system fail to address. In some States, including Tajikistan, while the State's legal framework appears in many respects to be in line with international standards, in practice the law and institutions often fail to effectively protect human rights and provide access to effective remedies for serious violations, such as torture and other ill-treatment.²¹ In those cases, sufficient protection against human rights abuses cannot be provided if the legal instruments are not properly enforced, no matter how sophisticated they are.

This compilation of cases is published as part of ICJ's Global Redress and Accountability Initiative,²² with a view to rendering accessible the cases of the Human Rights Committee related to torture and other ill-treatment to a wide range of different actors within and engaging with the justice system. It should be useful both for independent practitioners such as lawyers, human rights defenders and civil society organizations, and for the judiciary, but also the Ministry of Justice, the Ministry of Health or the Ministry of Interior, under whose competence some of the issues may fall. The publication should be of equal interest to IGOs working in or with an interest in Tajikistan.

This introduction to the highlight just some of the main issues which have been identified by the Committee in almost 20 years of its practice on Tajikistan. Several patterns regarding the actual functioning of the Tajik criminal justice system can be drawn from the Committee's decisions. Together they represent an important evidentiary source to determine where the justice system fails in practice to protect human rights that are guaranteed by the ICCPR and often by Tajikistan law and procedure. This compilation also includes two cases which the Committee found inadmissible due to a lack of substantiation of the allegations or on other procedural grounds.²³ However, they are included in the compilation and are used in this analysis to demonstrate the reasoning of the Committee in cases of inadmissibly as well as the history of allegations raised regarding human rights violations in Tajikistan.

²¹ Achieving Justice for Gross Human Rights Violations in Tajikistan, Baseline Study, October 2017, ICJ Global Redress and Accountability Initiative, page 3.

²² ICJ launches global redress and accountability initiative, <https://www.icj.org/icj-launches-global-redress-and-accountability-initiative/>.

²³ *Bakhrullo Minboev v Tajikistan*, Human Rights Committee Communication 1174/2003 CCPR/C/98/D/1174/2003; *M.N et al v Tajikistan*, Human Rights Committee Communication 1500/2006; CCPR/C/106/D/1500/2006.

While the freedom from torture and other cruel, inhuman or degrading treatment or punishment under Article 7 is the central point of this review, it logically includes some reference to other relevant Articles of the ICCPR, including Article 2(3) (the right to an effective remedy for violations of the Covenant rights) Article 6 (right to life), Article 10 (conditions of detention), Article 9 (the right to liberty) and Article 14 (fair trial rights). These rights are analysed only where they are pleaded by applicants in cases also involving allegations of violations of rights under Article 7 or 10 ICCPR.

This compilation includes only decisions of the UN Human Rights Committee. Although Tajikistan is also a party to the UN Convention against Torture, which it acceded to in 1995, it has not accepted the right of individual petition under that Convention, and so the Human Rights Committee remains the primary international mechanism allowing individual complaints in respect of torture or other ill-treatment in Tajikistan.

Prohibition of torture and other cruel, inhuman and degrading treatment

This publication does not have an ambition to provide a thorough analysis of the definition of torture or cruel, inhuman or degrading treatment or punishment, or of the correlative standards and obligations under international law.

Yet, it is useful to mention that a definition of torture, is contained the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁴ (hereafter, "UNCAT")²⁵ which also sets out detailed obligations, binding on Tajikistan, relating to prevention, investigation and remedies for torture and other acts of cruel, inhuman or degrading treatment or punishment.

Article 7 of the ICCPR provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Although the ICCPR does not provide a specific definition of torture, or of cruel, inhuman or degrading treatment or punishment, the Human Rights Committee has made clear that prohibited conduct under Article 7 extends to acts causing physical pain, as well as those causing mental suffering, and prolonged solitary confinement.²⁶ The Human Rights Committee has held that whether treatment amounts to a violation of Article 7 "depends on all circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim."²⁷

Under the Covenant, obligations relating to torture and cruel, inhuman or degrading treatment or punishment are non-derogable, meaning that even under a state of emergency where the life of the nation is threatened, the State must give full effect to their article 7 obligations.²⁸

The overarching approach of the Human Rights Committee to the question of torture and CIDT is contained General Comments the Committee has issued, in particular General Comment No. 20, and General Comment 31 about the general obligations of States under the ICCPR as a whole. Other general comments on thematic areas are also relevant, containing direct references to article 7, such as General Comment 32 on the right to a fair trial; General Comment 35 on the right to liberty; and General Comment 36 on the right to life.

²⁴ Tajikistan ratified the CAT in 1995

²⁵ Convention Against Torture, Article 1(1): "For the purposes of this Convention "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

²⁶ Human Rights Committee, General Comment No.20 Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, paras. 5-6.

²⁷ *Vuolanne v Finland*, Communication No.265/1987, 7 April 1989, para.9.2

²⁸ Article 4 of the ICCPR.

Elements of the General Comments that are particularly important to bear in mind include its emphasis on the non-admissibility of evidence obtained through torture or other ill-treatment. The Committee has stated that. "[I]t is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."²⁹

In respect of the conduct of private actors, the Committee states that "[i]t is ... implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power."³⁰

The Committee also makes clear that there is obligation to criminalize, investigate and prosecute and that "failure to investigate [article 7 violations], failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant."³¹

With respect to amnesties or similar measures to nullify accountability: "[...] amnesties are generally incompatible with the duty of States to investigate [acts of torture]; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future [...]."³²

Furthermore, the Committee has recognized a non-refoulement obligation arising under article 7: "States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant [...]."³³

The distinction between torture and other forms of cruel, inhuman or degrading treatment or punishment has been a matter of some international debate and Article 7 of the ICCPR does not draw a clear distinction as to legal consequences between torture and other ill-treatment prohibited by the article. The Committee recognizes that these distinctions "depend on the nature, purpose and severity of the treatment applied."³⁴ The Committee's approach has generally been to indicate that the legal consequences as between torture and other CIDTP are largely similar.³⁵

It is important to bear in mind that all ill-treatment falling within Article 7 ICCPR, whether torture or other forms of cruel, inhuman or degrading treatment, is absolutely prohibited, and that rights under Article 7 cannot be subject to qualification or limitation in any circumstances. Unlike many other ICCPR rights, article 8 and cannot be derogated from even pursuant to a state of emergency.³⁶

Moreover, as noted above, prolonged or indefinite solitary confinement or uncertainty about the length of detention may constitute a violation of Article 7 per se.³⁷ Prolonged

²⁹ General Comment No. 20, para. 12.

³⁰ Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 8.

³¹ General Comment No. 31, para. 18.

³² Human Rights Committee, General Comment No. 20, para. 15.

³³ General Comment No. 31, para. 12.

³⁴ Human Rights Committee, General Comment 20, Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para.4.

³⁵ General Comment No. 31, para. 4.

³⁶ Human Rights Committee, General Comment 20, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) para.3

³⁷ F.K.A.G. et al. v Australia, Comm. No. 2094/2011; M.M.M. et al. v Australia, Comm. No. 2136/2012., *Basilio Laureano Atachahua v. Peru*, Communication No. 577/1994, 9 January 1998, para. 8.7; Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui, the Special

incommunicado detention can also in itself constitute a form of cruel, inhuman or degrading treatment or even torture.³⁸ In many Tajikistan cases where incommunicado detention was reportedly used by the authorities, it lasted for periods including 7 days,³⁹ 10 days,⁴⁰ 12 days⁴¹, 40 days⁴² and 48 days.⁴³

It is important to note that the cases in this compilation often involve types of violations alleged repeatedly in individual communications to the Committee over many years despite various domestic attempts to strengthen the underlying legal guarantees to protect against torture and ill-treatment. This suggests that the most heinous practices continue to persist and will continue unless addressed at a systemic level through a holistic approach. It is a long-established principle that rights must not be “theoretical or illusory but practical and effective”⁴⁴ and considerable efforts are needed to achieve this in regard to the protection against torture and ill-treatment in Tajikistan.

I. Allegations of torture and other ill-treatment

Methods of ill-treatment prevalent in Tajikistan cases

Out of the 24 cases concerning Tajikistan decided by the Committee since 1999, 20 concern allegations of violations of Article 7 ICCPR right of freedom from torture and other cruel, inhuman or degrading treatment or punishment. The alleged violations systematically occur in cases of detention of individuals and may take different forms. The most common methods of ill-treatment raised in the complaints include different types of severe systematic⁴⁵ or constant⁴⁶ beatings,⁴⁷ including to the point of breaking a finger,⁴⁸ ribs⁴⁹ or injuring internal organs.⁵⁰ In *Saidova v Tajikistan*, the husband of the applicant allegedly had “a bruise on top of his right eyebrow, on his thorax, his legs were swollen, and he was unable to stand; during one month he secreted blood, because of internal injuries”.⁵¹

Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt., E/CN.4/2006/120 (2006), para. 87. see also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, adopted on 8 January 2016, Rule 43; Human Rights Council Res 8/8, 18 June 2008, para 7(c).

³⁸ UN Commission on Human Rights, Resolution 2003/32: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2003), para. 14; UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 56.

³⁹ *Aliboeva v Tajikistan*, above note 5, para. 2.4.

⁴⁰ *Toshev v Tajikistan*, above note 34, para. 6.4.

⁴¹ *Kipro v Tajikistan*, above note 14, paras. 2.3 and 6.4.

⁴² *Boimurodov v Tajikistan*, above note 13, paras. 2.6 and 7.4.

⁴³ *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 3.6.

⁴⁵ *Kurbonov v Tajikistan*, Human Rights Committee Communication 1208/2003, UN Doc CCPR/C/86/D/1208/2003 (2006), para. 2.1.

⁴⁶ *Aliboeva v Tajikistan*, Human Rights Committee Communication 985/2001, UN Doc CCPR/C/85/D/985/2001 (2005), para. 2.4; *Dunaev v Tajikistan*, Human Rights Committee Communication 1195/2003, UN Doc CCPR/C/95/D/1195/2003 (2009), paras. 2.5, 2.7, 2.8 and 7.2.

⁴⁷ *Khomidova v Tajikistan*, Human Rights Committee Communication 1117/2002, UN Doc CCPR/C/81/D/1117/2002 (2004), para. 2.5; *Boboyev v Tajikistan*, Human Rights Committee Communication 2173/2012, UN Doc CCPR/C/120/D/2173/2012 (2017), para. 2.5.

⁴⁸ *Karimov and Nursatov v Tajikistan*, Human Rights Committee Communications 1108/2002 and 1121/2002, UN Doc CCPR/C/89/D/1108&1121/2002 (2007), para. 2.14.

⁴⁹ *Dunaev v Tajikistan*, above note 5, paras. 2.3 and 7.2.

⁵⁰ *Aliboeva v Tajikistan*, above note 5, para. 2.4.

⁵¹ *Saidova v Tajikistan*, Human Rights Committee Communication 964/2001, UN Doc CCPR/C/81/D/964/2001 (2004), para. 2.3.

The beatings may include use of objects, such as batons,⁵² truncheons,⁵³ pistol handles and metal pipes,⁵⁴ sometimes to the point of having broken ribs and difficulties in talking and moving.⁵⁵ In *Sattorova v Tajikistan*, the son of the applicant, who suffered from a mental disability, was “beaten with sticks, batons, ... punched and kicked, ... hit with the butt of an automatic rifle”.⁵⁶

Moreover, administration of electric shock as a means of inflicting pain has been reported in a large number of cases, pointing to a widespread use of this method ill-treatment.⁵⁷ Electric shock has allegedly been applied to different parts of the body,⁵⁸ including teeth,⁵⁹ genitals and fingers.⁶⁰ In *Boboyev v Tajikistan*, the victim died of mechanical asphyxiation as a result of swallowing his tongue, probably, as a result of the use of electric shocks.⁶¹

Torture may further include pulling out of nails with pliers,⁶² prolonged handcuffing to a radiator⁶³ or a battery⁶⁴, hanging up from the ceiling⁶⁵ while administering kicks in the kidneys,⁶⁶ strangulation,⁶⁷ as well as food and sleep deprivation.⁶⁸ In the case of *Sharifova, Safarov and Burkhonov v Tajikistan*, the officers were aware that the victim had suffered from night blindness since childhood and as a consequence they deliberately interrogated him at night.⁶⁹ In *Shukurova v Tajikistan*, cords, soap and razor blades were placed in the detainee’s cells to incite him to commit suicide.⁷⁰

Conditions of detention

As has been regularly raised in the communications, torture or ill-treatment are usually accompanied by poor conditions of detention, which may constitute violations of ICCPR Article 10 as well as, in severe cases, Article 7. For example, in *Saidova v Tajikistan*, poor conditions of detention included a cell measuring one by two meters, with concrete floor, with no other bed than a thin mattress and a bucket in the corner as a toilet.⁷¹ The victim, who suffered from viral hepatitis, was given food which did not suit his medical condition and led to a severe

⁵² *Shukurova v Tajikistan*, Human Rights Committee Communication 1044/2002, UN Doc CCPR/C/86/D/1044/2002 (2006), para. 2.3; *Khomidova v Tajikistan*, above note 5, para. 2.5; *Kurbanova v Tajikistan*, Human Rights Committee Communication 1096/2002, UN Doc CCPR/C/79/D/1096/2002 (2003), para. 3.2.

⁵³ *Idieva v Tajikistan*, Human Rights Committee Communication 1276/2004, UN Doc CCPR/C/95/D/1276/2004 (2009), para. 2.2; *Khuseynova and Butaeva v Tajikistan*, Human Rights Committee Communications 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263-1264/2004 (2008), para. 2.2.

⁵⁴ *Boimurodov v Tajikistan*, Human Rights Committee Communication 1042/2001, UN Doc CCPR/C/85/D/1042/2001 (2005), para. 2.2.

⁵⁵ *Kipro v Tajikistan*, Human Rights Committee Communication 1401/2005, UN Doc CCPR/C/97/DR/1401/2005 (2009), para. 2.4.

⁵⁶ *Sattorova v Tajikistan*, Human Rights Committee Communication 1200/2003, UN Doc CCPR/C/95/D/1200/2003 (2009), para. 2.4.

⁵⁷ *Boboyev v Tajikistan*, above note 6, para. 2.5; *Kurbonov v Tajikistan*, above note 4, para. 2.1; *Khomidova v Tajikistan*, above note 6, para. 2.5; *Kurbanova v Tajikistan*, above note 11, para. 3.2; *Idieva v Tajikistan*, above note 12, para. 2.2; *Sattorova v Tajikistan*, above note 15, para. 2.4.

⁵⁸ *Kipro v Tajikistan*, above note 14, para. 2.4; *Idieva v Tajikistan*, above note 12, para. 2.2; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.2.

⁵⁹ *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.5.

⁶⁰ *Ashurov v Tajikistan*, Human Rights Committee Communication 1348/2005, UN Doc CCPR/C/89/D/1348/2005 (2007), para. 2.2.

⁶¹ *Boboyev v Tajikistan*, above note 6, paras. 2.5, 2.8, 2.9, 4.5, 5.5 and 9.2.

⁶² *Boimurodov v Tajikistan*, above note 13, para. 2.2.

⁶³ *Kurbonov v Tajikistan*, above note 4, para. 2.1; *Dunaev v Tajikistan*, above note 5, para. 2.7.

⁶⁴ *Ashurov v Tajikistan*, above note 19, para. 2.2.

⁶⁵ *Sharifova, Safarov and Burkhonov v Tajikistan*, Human Rights Committee Communications 1209/2003, 1231/2003 and 1241/2004, UN Doc CCPR/C/92/D/1209,1231/2003&1241/2004 (2008), para. 2.2.

⁶⁶ *Shukurova v Tajikistan*, above note 11, para. 2.3.

⁶⁷ *Kurbanova v Tajikistan*, above note 11, para. 3.2.

⁶⁸ *Ashurov v Tajikistan*, above note 19, para. 2.2.

⁶⁹ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.10.

⁷⁰ *Shukurova v Tajikistan*, above note 11, para. 2.3.

⁷¹ *Saidova v Tajikistan*, above note 10, paras. 2.10 and 6.4.

stomach injury.⁷² In *Kurbanova v Tajikistan*, the cell had no water, toilets could not be used because of the lack of water and temperatures were extreme both in winter and summer.⁷³ Furthermore, air circulation was limited and the cell was infested with insects.⁷⁴ The detainee was allowed to leave his cell only half an hour a day.⁷⁵

In some instances, poor conditions of detention have amounted to a violation of ICCPR Article 7. In one case, the detainee was held in an isolation cell without access to food, water or medical care despite two broken ribs.⁷⁶ In another case, the detention took place in an isolation cell for ten days, during which the detainee was provided only with bread and water, without access to medical care despite a skin disease.⁷⁷

Involvement of relatives

Interrogation tactics employing involving actual or putative threats to the relatives of detainees as a means of exerting pressure on the detainee appears to be a common feature in many of the cases considered by the Committee in regard to Tajikistan. Detainees are often threatened that if they do not yield to the demands of the law enforcement officers, their relatives would suffer consequences.⁷⁸ For example, in *Sharifova, Safarov and Burkhonov v Tajikistan*, a detainee was told that if he did not “confess” guilt, his parents would face “serious problems”.⁷⁹ Subsequently, his father was charged with hooliganism and sentenced.⁸⁰ In the case of *Khomidova v Tajikistan*, the wife and children of the detainee were forced to leave their house, which was then set on fire.⁸¹ The detainee’s father was also beaten with a rifle butt while his mill was destroyed.⁸² In *Idieva v Tajikistan*, the mother of the detainee was arrested and released only two days later upon his own arrest.⁸³ In *Khalilova v Tajikistan*, the father of the detainee was brought in front of the detainee while the latter was subjected to beatings and threatened that if he did not “confess” to two murders, his father would be killed.⁸⁴ Such instances of psychological pressure were found by the Committee to violate article 7 ICCPR and in *Khalilova v Tajikistan* the Committee elaborated as follows:

“The Committee has taken note of the author’s allegations that her son, while in detention, was ill-treated and beaten by the investigators to force him to confess guilt and that in order to put additional pressure on him, his father was beaten and tortured in front of him and as a consequence died in the police premises. The author furthermore identified by name some of the individuals alleged to have been responsible for the beatings of her son and for burning her husband’s hands with an iron. In the absence of any State party information, due weight must be given to the author’s allegations, to the effect that they have been sufficiently substantiated. The Committee considers that the facts before it justify the conclusion that the author’s son was subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.”⁸⁵

Relatives as victims themselves

⁷² *Saidova v Tajikistan*, above note 10, para. 2.9.

⁷³ *Kurbanova v Tajikistan*, above note 11, paras. 3.7 and 7.8.

⁷⁴ *Kurbanova v Tajikistan*, above note 11, paras. 3.7 and 7.8.

⁷⁵ *Kurbanova v Tajikistan*, above note 11, paras. 3.7 and 7.8.

⁷⁶ *Dunaev v Tajikistan*, above note 5, paras. 2.3 and 7.3.

⁷⁷ *Toshev v Tajikistan*, Human Rights Committee Communications 1499/2006, UN Doc CCPR/C/101/D/1499/2006 (2011), paras. 2.5, 6.2 and 6.4.

⁷⁸ *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.5; *Saidova v Tajikistan*, above note 10, para. 2.3; *Kurbonov v Tajikistan*, above note 4, para. 2.1.

⁷⁹ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.2.

⁸⁰ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.2.

⁸¹ *Khomidova v Tajikistan*, above note 6, para. 2.6.

⁸² *Khomidova v Tajikistan*, above note 6, para. 2.6.

⁸³ *Idieva v Tajikistan*, above note 12, para. 2.2.

⁸⁴ *Khalilova v Tajikistan*, Human Rights Committee Communications 973/2001, UN Doc CCPR/C/83/D/973/2001 (2005), paras. 2.6 and 7.2.

⁸⁵ *Khalilova v Tajikistan*, above note 44, para. 7.2.

There have been cases where relatives of detainees were themselves found to be the victims of torture or other ill-treatment in violation of ICCPR Article 7. For example, in *Boboyev v Tajikistan*, lack of information concerning the death of the victim's son in detention and the absence of proper investigation thereafter were determined to have caused relatives "continued anguish and mental stress ... by this persisting uncertainty."⁸⁶ In *Shukurova v Tajikistan*, similar anguish and mental stress were determined to be of such intensity as to amount to a violation of article 7 ICCPR. The basis for this conclusion was the total absence of communication about the date of execution of the victim's relative and the location of his gravesite.⁸⁷ In *Aliboeva v Tajikistan*, the Committee recalled in its determination that "the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress."⁸⁸

II. "Confessions" obtained under torture or other ill-treatment

Obtaining a "confession" or similar involuntary is mentioned as one of the expressly identified purposes for which torture is committed under the CAT.⁸⁹ In addition to violating Article 7, forced signature of a "confession" or other involuntary statement may constitute a violation of Article 14.3 (g) ICCPR. As the Committee stated in its jurisprudence, "the wording, in article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities of the accused with a view to obtaining a confession of guilt".⁹⁰

Specifically, Article 16 of the CAT provides that "each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made [...]", and Human Rights Committee has also made clear that "it is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."⁹¹ The exclusionary rule is an integral part of the general, non-derogable prohibition of torture and other forms of ill-treatment treatment or punishment.⁹² It is included in the treaty obligations of all States parties to general human rights treaties, such as ICCPR, even if not expressly mentioned.⁹³

In cases decided by the Committee in regard to Tajikistan, there is a pattern of the use of torture or other ill-treatment to obtain self-incriminating statements.⁹⁴ In almost all cases, the victims were not able to withstand the ill-treatment and ultimately agreed to such statements.⁹⁵ These statements were not made in a procedural "vacuum" or because of

⁸⁶ *Boboyev v Tajikistan*, above note 6, para. 9.7.

⁸⁷ *Shukurova v Tajikistan*, above note 11, para. 8.7; *Khalilova v Tajikistan*, above note 44, para. 7.7.

⁸⁸ *Aliboeva v Tajikistan*, above note 5, para. 6.7.

⁸⁹ Article 1 para. 1 CAT.

⁹⁰ Communication No. 330/1988, *Berry v. Jamaica*, views adopted on 4 July 1994, paragraph 11.7; Communication No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004, paragraph 7.4; Communication No. 912/2000, *Deolall v. Guyana*, views adopted on 1 November 2004, paragraph 5.1.

⁹¹ Human Rights Committee, General Comment No. 20, UN Doc. HRI/GEN/1/Rev.7, 10 March 1992, para.12.

⁹² Committee against Torture, P.E. v. France, No.193/2001, 19 December 2002, para.6.3; G.K. v. Switzerland, No.219/2002, para.6.10; and Kiti v. Morocco, No.419/2010, 5 July 2011, para.8.8.

⁹³ Universal Declaration of Human Rights, Article 5; International Covenant on Civil and Political Rights, Article 7; European Convention on Human Rights, Article 3; American Convention on Human Rights, Article 5; African Charter of Human and Peoples' Rights, Article 5; 1949 Geneva Conventions, common article 3; Third Geneva Convention (on Prisoners of War), Article 87; Fourth Geneva Convention (on Civilians), Article 32.

⁹⁴ *Idieva v Tajikistan*, above note 12, paras. 2.2, 9.2 and 9.3; *Dunaev v Tajikistan*, above note 5, para. 2.3; *Sattorova v Tajikistan*, above note 15, paras. 2.4 and 8.3; *Khuseynova and Butaeva v Tajikistan*, above note 12, paras. 2.2, 2.9, 2.14, 3.1, 3.3, 3.6, 3.7 and 8.3.

⁹⁵ *Shukurova v Tajikistan*, above note 11, para. 2.3; *Boimurodov v Tajikistan*, above note 13, para. 2.3; *Aliboeva v Tajikistan*, above note 5, para. 2.4; *Khalilova v Tajikistan*, above note 44, para. 2.5; *Kurbanova v Tajikistan*, above note 11, para. 2.2; *Toshev v Tajikistan*, above note 34, para. 2.7.

personal characteristics of the alleged abusers, but have been used in the courtroom as the basis for conviction.⁹⁶ The cases demonstrate that investigators sometimes directly dictated the text of such “confessions”⁹⁷ and prepared blank forms for the detainees to sign.⁹⁸ In *Sattorova v Tajikistan*, a “confession” was forcibly obtained from a detainee with mental disabilities, who had difficulties in reading or writing and was unable to articulate his thoughts clearly.⁹⁹ In *Khalilov v Tajikistan*, the detainee was forced to make a self-incriminating statement on national TV.¹⁰⁰ Mere threats of torture or ill-treatment may also be used in order to obtain a “confession”,¹⁰¹ as was the case in *Kurbonov v Tajikistan*, where the detainee was told that he would be killed if he did not admit to the crime.¹⁰²

Even though detainees typically retract their statements later in the proceedings or in Court,¹⁰³ they are often disregarded by prosecutors and judges,¹⁰⁴ as will be discussed in *Chapter V* below.

Threats of retaliation for complaining about torture or ill-treatment

While the right to an effective remedy for torture or ill-treatment is itself guaranteed in the ICCPR (article (3)), the fear of retaliation for complaints about torture may lead to silencing of its victims at every stage of the proceedings. For instance, in *Idieva v Tajikistan*, the detainee was forced to tell the doctor who attested to his health condition that he had not been ill-treated by police officers, as such medical certificate was a prerequisite for his transfer to the pre-trial detention facility.¹⁰⁵ In the case of *Khomidova v Tajikistan*, the family of the detainee refrained from filing any official complaint with the authorities about the treatment he had undergone for fear of further harm or even execution.¹⁰⁶ In *Kurbonov v Tajikistan*, the victim had filed an official complaint upon his release reporting the endured mistreatment.¹⁰⁷ As a result, he was intimidated and severely beaten by police officers in an attempt to make him withdraw his complaint.¹⁰⁸ His father, brothers and cousin were also beaten by the police during unlawful searches of their home.¹⁰⁹ Finally, in the case of *Aliboeva v Tajikistan*, an Uzbek detainee refrained from requesting an interpreter during the criminal proceedings because of the torture to which he had allegedly been subjected.¹¹⁰ This led the Committee to consider that domestic remedies had not been exhausted in that regard and that this part of the complaint was inadmissible.¹¹¹

III. Arrest and police investigation

Cases brought before the Committee alleging torture or other ill-treatment in pre-trial detention have frequently also involved allegations of arbitrary detention. Under ICCPR Article 9 everyone has the right to liberty and security, that no one shall be subjected to arbitrary

⁹⁶ *Boimurodov v Tajikistan*, above note 13, para. 2.2; *Khomidova v Tajikistan*, above note 6, para. 2.5.

⁹⁷ *Ashurov v Tajikistan*, above note 19, para. 2.2;.

⁹⁸ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.14.

⁹⁹ *Sattorova v Tajikistan*, above note 15, paras. 2.1 and 2.7.

¹⁰⁰ *Khalilova v Tajikistan*, above note 44, para. 7.4.

¹⁰¹ *Toshev v Tajikistan*, above note 34, para. 6.6.

¹⁰² *Kurbonov v Tajikistan*, above note 4, para. 2.4.

¹⁰³ *Toshev v Tajikistan*, above note 34, para. 6.6; *Kurbonov v Tajikistan*, above note 4, para. 2.5; *Idieva v Tajikistan*, above note 12, para. 2.6; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.9 and 2.17; *Boimurodov v Tajikistan*, above note 13, para. 2.6; *Saidova v Tajikistan*, above note 10, para. 6.2.

¹⁰⁴ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.14; *Toshev v Tajikistan*, above note 34, paras. 1.12 and 6.6; *Sattorova v Tajikistan*, above note 15, para. 2.10; *Khuseynova and Butaeva v Tajikistan*, above note 12, paras. 2.9.a and 2.17.b; *Idieva v Tajikistan*, above note 12, para. 2.6.a; *Saidova v Tajikistan*, above note 10, para. 2.8.

¹⁰⁵ *Idieva v Tajikistan*, above note 12, para. 2.3.

¹⁰⁶ *Khomidova v Tajikistan*, above note 6, para. 2.13.

¹⁰⁷ *Kurbonov v Tajikistan*, above note 4, para. 2.2.

¹⁰⁸ *Kurbonov v Tajikistan*, above note 4, para. 2.3.

¹⁰⁹ *Kurbonov v Tajikistan*, above note 4, para. 2.3.

¹¹⁰ *Aliboeva v Tajikistan*, above note 5, para. 2.7.

¹¹¹ *Aliboeva v Tajikistan*, above note 5, para. 5.3.

arrest or detention and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.¹¹² In addition, anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against them.¹¹³ Anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.¹¹⁴ The nature and scope of these article 9 obligations have been elaborated in the Human Rights Committees General Comment 35 (liberty and security of the person).¹¹⁵

This General Comment contains elements directly applicable to questions of torture and ill-treatment. Among the most relevant are the procedural guarantees in Article 9, which serve to reduce the likelihood of risks of arbitrary detention.¹¹⁶ Examples of such safeguards include keeping detainees in officially acknowledged places of detention; prompt and regular access to lawyers, should be ensured, as well as to family members and, if needed, to doctors, interpreters, consular or UNHCR authorities; keeping a centralized official register with key details, easily accessible to those concerned; rights should be communicated promptly and efficiently in a language detainees understand.¹¹⁷ Whether those factors in article 9 were accounted for and the “appropriateness of the conditions prevailing in detention” would determine whether the detention was arbitrary.¹¹⁸ Article 10 concerning the conditions of detention complements Article 9, primarily dealing with the fact of detention and procedural safeguards.¹¹⁹ The right to personal security in article 9 protects interests in bodily and mental integrity that are also protected by article 7.¹²⁰

Arbitrary detention

In *Kurbanova v Tajikistan*, where the victim was detained for seven days without any arrest warrant, official charges or any judicial decision confirming his detention.¹²¹ In *Toshev v Tajikistan*, the detainee was held incommunicado in an isolation cell for ten days.¹²² The Committee found that Article 9(3) was violated by default in all instances where detention was ordered by the public prosecutor rather than a court, which was the case in Tajikistan for a number of years.¹²³ As the Committee recalled in *Ashurov*:

“It is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an “officer authorized to exercise judicial power” within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision”.¹²⁴

¹¹² Article 9, para. 1 ICCPR; see also, Communications No. 1461/2006 & 1462/2006 & 1476/2006 & 1477/2006, *Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov v. Kyrgyzstan*, Views adopted on 16 July 2008, paragraph 12.2.

¹¹³ Article 9, para. 2 ICCPR.

¹¹⁴ Article 9, para. 3 ICCPR.

¹¹⁵ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014.

¹¹⁶ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 56.

¹¹⁷ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 58.

¹¹⁸ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 59.

¹¹⁹ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 59.

¹²⁰ UN Human Rights Committee, General Comment No 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 56.

¹²¹ *Kurbanova v Tajikistan*, above note 11, para. 7.2.

¹²² *Toshev v Tajikistan*, above note 34, para. 6.4.

¹²³ *Toshev v Tajikistan*, above note 34, para. 3.3; *Kipro v Tajikistan*, above note 14, paras. 2.7 and 6.5;

Ashurov v Tajikistan, above note 19, para. 6.5.

¹²⁴ *Ashurov v Tajikistan*, above note 19, para 6.5.

Moreover, detainees are not immediately informed of the charges justifying their detention and, at times, prolonged periods elapse between the arrest and communication of official charges.¹²⁵ For example, in *Sattorova v Tajikistan*, the victim alleged being forcibly taken from his apartment and formally charged only one month after his arrest.¹²⁶ Delay in the presentation of charges may also violate the right to a fair trial article 14, paragraph 3 (a) ICCPR¹²⁷ as well, as it affects the possibilities of the detainee to defend him or herself.¹²⁸

In *Kipro v Tajikistan*, the court failed to give a legal qualification on the nature of the thirteen initial days of detention,¹²⁹ when the victim was held in the Ministry of Security without any official record.¹³⁰

Tampering with evidence

Unlawful detention is not the only issue arising at the outset of criminal proceedings, as preliminary investigations also raise significant concern. Many applicants from Tajikistan have complained of the actions of the police,¹³¹ by which the investigation tampered with physical evidence¹³² and witness depositions.¹³³ For example, in *Dunaev v Tajikistan*, the investigator allegedly acted “in a superficial and biased manner”, did not correctly record the detainee’s depositions and made no attempt to verify his alibi.¹³⁴ The investigations only focused on the fabricated depositions of the detainee’s co-accused, who, having an obvious interest in the case, falsely incriminated him.¹³⁵ In *Ashurov v Tajikistan*, the investigator requested the expert to tamper with the evidence by certifying that the fingerprints allegedly collected from the plaintiff’s apartment belonged to the accused, who was then arrested on that sole basis.¹³⁶

¹²⁵ *Saidova v Tajikistan*, above note 10, para. 2.5; *Kurbanova v Tajikistan*, above note 11, para. 2.1; *Karimov and Nursatov v Tajikistan*, above note 7, paras. 2.4, 3.4 and 3.8; *Idieva v Tajikistan*, above note 12, para. 3.4; *Khomidova v Tajikistan*, above note 6, para. 2.2; *Khuseynova and Butaeva v Tajikistan*, above note 12, paras. 2.6 and 2.14.

¹²⁶ *Sattorova v Tajikistan*, above note 15, paras. 2.3 and 2.5.

¹²⁷ CCPR General Comment n° 32: “The right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of article 14. This guarantee applies to all cases of criminal charges, including those of persons not in detention, but not to criminal investigations preceding the laying of charges. Notice of the reasons for an arrest is separately guaranteed in article 9, paragraph 2 of the Covenant. The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally – if later confirmed in writing – or in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based”.

¹²⁸ *Kurbanova v Tajikistan*, above note 11, para 7.3

¹²⁹ Para. 6.4: “The Committee notes that the author has claimed that her son was apprehended by officials of the Ministry of Security on 7 May 2000 and detained isolated, without being informed officially of the reasons of detention and without providing him with legal representation in spite of his numerous requests to that effect, in the premises of the Ministry of Security until 20 May 2000, when he was officially charged. The author further claims that when the issue was raised by her son’s lawyer during the trial, the court failed to give a legal qualification on the nature of the detention of her son during the thirteen initial days of detention. In the absence of any explanations by the State party in this respect, the Committee decides that due weight must be given to these allegations. The Committee recalls that article 9, paragraph 1 of the Covenant requires that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 9, paragraph 2, requires that anyone arrested shall be informed at the time of arrest of the reasons of arrest and of any charges against him. Even if in the present case, the facts as presented demonstrate that the authorities had sufficient grounds to apprehend the author’s son as a suspect, the Committee considers that the fact that he was kept in detention for thirteen days before his actual arrest to be documented formally and without informing him officially of the reasons of his arrest, constitutes a violation of Mr. Kirpo’s rights under article 9, paragraphs 1 and 2, of the Covenant”.

¹³⁰ *Kipro v Tajikistan*, above note 14, paras. 2.5, 2.6, 6.2 and 6.4.

¹³¹ *Dunaev v Tajikistan*, above note 5, paras. 2.4 and 2.5; *Sattorova v Tajikistan*, above note 15, para. 2.6; *Ashurov v Tajikistan*, above note 19, para. 2.3; *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.7; *Khomidova v Tajikistan*, above note 6, para. 2.8; *Khalilova v Tajikistan*, above note 44, para. 2.5.

¹³² *Sattorova v Tajikistan*, above note 15, para. 2.6.

¹³³ *Khomidova v Tajikistan*, above note 6, para. 2.8.

¹³⁴ *Dunaev v Tajikistan*, above note 5, para. 2.4.

¹³⁵ *Dunaev v Tajikistan*, above note 5, para. 2.5.

¹³⁶ *Ashurov v Tajikistan*, above note 19, para. 2.3.

In the case of *Karimov and Nursatov v Tajikistan*, the investigators staged a reconstitution of the accused's "confession" at the crime scene: two days before the actual verification, the accused was brought to the crime scene where he it was explained to him where to stand, what to say, and he was shown to the individuals who later identified him during an identification parade.¹³⁷ The reconstruction then took place before 24 investigators and the accused was obliged to repeat what he had been instructed to say.¹³⁸ Lastly, in *Khalilova v Tajikistan*, the investigators refused to interrogate many individuals who could have testified that the accused was innocent.¹³⁹

IV. Lack of effective legal representation

Access to legal representation is one of the fundamental obligations of a State in order to guarantee fair trial and the right to liberty, provided for in articles 14 and article 9 ICCPR respectively. In its General Comments 32 and 35, the Committee specifically articulated that prompt and regular access to a lawyer is essential for the prevention of torture.¹⁴⁰ With regard to the adequate conditions for preparation of the defence, both the accused person "must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing" and lawyers must be granted enough time and be able to familiarize themselves with the case materials (evidence and any other related documents) without hindrance, with additional time to prepare and/or adjournment of the trial granted if necessary.¹⁴¹

The problem of effective access to a lawyer and representation, at all stages of criminal proceedings protected under both articles 9 and 14 of the ICCPR has been raised in a substantial number of the cases brought before the Committee in regard to Tajikistan, and is closely linked to torture and other ill-treatment. Lawyers, especially privately hired lawyers,¹⁴² have encountered obstacles when trying to provide effective counseling to their clients such as being prevented from seeing their clients in detention.¹⁴³ Some detainees were denied access to a lawyer throughout the entire preliminary investigation,¹⁴⁴ despite numerous requests.¹⁴⁵ Others were forced to sign declarations waiving their right to a legal counsel.¹⁴⁶ These difficulties generally diminish upon bringing formal charges against the accused, after which they are assigned a lawyer or may access their own more freely.¹⁴⁷

In a number of cases, interrogations of the accused have taken place without a lawyer,¹⁴⁸ precisely upon the arrest and during the first stages of the investigation (see). In that regard, the Committee has found that denying access to a lawyer for thirteen days while conducting the investigation violated the right to adequate facilities for preparation of a defence and the right to legal assistance under Article 14, paragraph 3(b) and (d).¹⁴⁹

Legal representation violations were raised in cases where the accused faced charges that could result in the death sentence.¹⁵⁰ The Committee emphasized that "particularly in cases involving capital punishment, it is axiomatic that the accused must effectively be assisted by

¹³⁷ *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.7.

¹³⁸ *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.7.

¹³⁹ *Khalilova v Tajikistan*, above note 44, para. 2.5.

¹⁴⁰ General Comment 35, para. 58.

¹⁴¹ General Comment 32, paras. 32-33.

¹⁴² *Karimov and Nursatov v Tajikistan*, above note 7, para. 6.4.

¹⁴³ *Toshev v Tajikistan*, above note 34, para. 2.6.

¹⁴⁴ *Dunaev v Tajikistan*, above note 5, paras. 2.5 and 2.6; *Shukurova v Tajikistan*, above note 11, para. 2.5.

¹⁴⁵ *Kipro v Tajikistan*, above note 14, paras. 2.5 and 6.4.

¹⁴⁶ *Kurbanova v Tajikistan*, above note 11, para. 2.1; *Toshev v Tajikistan*, above note 34, para. 2.7.

¹⁴⁷ *Khomidova v Tajikistan*, above note 6, para. 2.4; *Aliboeva v Tajikistan*, above note 5, para. 2.4.

¹⁴⁸ *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 3.4.

¹⁴⁹ *Toshev v Tajikistan*, above note 34, para. 6.7.

¹⁵⁰ Death penalty has not been applied in Tajikistan since the adoption, in June 2004, of an official moratorium on executions.

a lawyer at all stages of the proceedings”.¹⁵¹ Refusal to appoint a lawyer or to authorize access to one in cases of capital punishment led to a violation of article 14, paragraph 3(b) and (d) ICCPR.¹⁵²

Attacks on lawyers

Cases before the Committee show that in Tajikistan, privately hired lawyers often faced pressure including cases of threats,¹⁵³ or being forced to withdraw from their representation in the case.¹⁵⁴ But even where legal representation was provided, lawyer-client confidentiality was not ensured as meetings were held in the presence of law-enforcement officials or investigators.¹⁵⁵

Corruption among lawyers

Apart from the obstacles mentioned above, the Committee’s jurisprudence reveals a long-standing issue of unethical or corrupt behavior among lawyers.¹⁵⁶ As the ICJ has previously underscored in a 2013 report:¹⁵⁷

“[T]hose lawyers who violate professional ethics undermine the integrity of the profession, by acting in the interests of law enforcement bodies or powerful private interests, contrary to the interests of their clients. Such lawyers, sometimes known in the region as “pocket lawyers”, are a persistent problem throughout Central Asia. The problem arises in particular in regard to lawyers appointed by the courts or investigating authorities to represent defendants in criminal proceedings who could not otherwise afford a lawyer. Throughout the region, there are frequent reports of some such lawyers acting in the interests of the prosecution rather than in defence of their clients’ rights. The phenomenon is recognized as one of the most serious problems of legal communities in Central Asia, however lawyers’ associations have not taken, or have not been able to take, effective action to address it, including through the promotion and enforcement of disciplinary action and the application of disciplinary measures. This has had a detrimental effect on the quality and dignity, as well as prestige of the legal profession, and has significantly undermined its effectiveness in protecting human rights and the rule of law”¹⁵⁸.

Some cases considered by the Committee confirm these findings of the ICJ. For instance, in *Khomidova v Tajikistan* the issue was raised of a lawyer appointed by the investigators who allegedly worked in the best interest of the prosecution.¹⁵⁹ In another case, leaving no other choice to the detainee, the investigator appointed his former assistant as official counsel.¹⁶⁰ In *Dunaev v Tajikistan*, the lawyer acted in concert with the investigator and helped him persuade the accused to sign certain documents even though he had not been allowed to examine the content of his criminal case file.¹⁶¹

Furthermore, it was alleged in *Sattorova v Tajikistan* that the defence lawyer acted in favour of the prosecution, never informing the family of the accused on any developments of the case, signing records on several procedural acts that were conducted in his absence and doing

¹⁵¹ *Idieva v Tajikistan*, above note 12, para. 9.5; *Kurbanova v Tajikistan*, above note 11, para. 6.5.

¹⁵² *Idieva v Tajikistan*, above note 12, paras. 2.4 and 9.5; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.4.

¹⁵³ *Toshev v Tajikistan*, above note 34, paras. 2.8 and 6.7.

¹⁵⁴ *Karimov and Nursatov v Tajikistan*, above note 7, paras. 2.16 and 7.5.

¹⁵⁵ *Toshev v Tajikistan*, above note 34, para. 6.7; *Khomidova v Tajikistan*, above note 6, para. 2.4.

¹⁵⁶ REFERENCE TO THE RELEVANT PART OF THE ICJ CA REPORT ON LAWYERS: <https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>

¹⁵⁷ ICJ, “Independence of the Legal Profession in Central Asia”, 2013, available at <https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>.

¹⁵⁸ ICJ, “Independence of the Legal Profession in Central Asia”, 2013, p. 30, available at <https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>.

¹⁵⁹ *Khomidova v Tajikistan*, above note 6, para. 2.4.

¹⁶⁰ *Ashurov v Tajikistan*, above note 19, para. 2.3.

¹⁶¹ *Dunaev v Tajikistan*, above note 5, para. 2.6.

nothing to prevent the ill-treatment his client had endured and reported to him.¹⁶² In both *Idieva v Tajikistan* and *Khuseynova and Butaeva v Tajikistan*, the applicants reported that when the interrogation had ended, the investigator invited a lawyer in to sign the interrogation protocol, although the applicants had never seen him before and were unaware that he had been assigned to them.¹⁶³ Subsequently, the lawyer participated in no more than two investigative actions.¹⁶⁴ It also sometimes happens that lawyers are absent during most of their client's trial.¹⁶⁵

In a number of its decisions, the Committee reiterated that while article 14, paragraph 3 (d) ICCPR does not entitle an accused to choose his or her counsel where the State is providing it free of charge, steps must be taken to ensure that the counsel, once assigned, provides effective representation in the interest of justice.¹⁶⁶ The lack of effective representation amounts to violation of the right to an effective defence under article 14, paragraphs 3 (b) and (d) ICCPR¹⁶⁷.

V. Torture is intrinsically linked to fair trial violations

As has been mentioned above, the prevention of torture is closely connected with other rights under the ICCPR. Procedural guarantees under article 14 of the Covenant often play an important role in the implementation of the prohibition on torture or other ill treatment under Article 7 ICCPR. In cases where accused persons have been ill-treated and against whom criminal charges are brought, scrupulous respect of the guarantees of fair trial is particularly important.¹⁶⁸

Article 14 ICCPR provides that:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial 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; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance,

¹⁶² *Sattorova v Tajikistan*, above note 15, para. 2.5.

¹⁶³ *Idieva v Tajikistan*, above note 12, para. 2.5; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.6

¹⁶⁴ *Idieva v Tajikistan*, above note 12, para. 2.5; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.6

¹⁶⁵ *Saidova v Tajikistan*, above note 10, para 2.7.

¹⁶⁶ *Saidova v Tajikistan*, above note 10, para. 6.8; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.4.

¹⁶⁷ *Saidova v Tajikistan*, above note 10, para. 6.8; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.4.

¹⁶⁸ General Comment No. 32, paras. 58, 60.

of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

The scope of obligations under article 14 have been detailed and clarified by the Human Rights Committee's General Comment 32.

The absolute and non-derogable nature of article 7 ICCPR rights is reflected in the application of fair trial rights to matters involving torture and other ill-treatment. For instance, no confessions or evidence obtained in violation of article 7 can be invoked in any court proceedings, except when testifying to the torture or ill-treatment having occurred.¹⁶⁹ In alleging the latter, information about circumstances of obtaining such evidence must be presented.¹⁷⁰ Furthermore, under Article 14 ICCPR, the presumption of innocence is a fundamental principle of fair trial that cannot be deviated from.¹⁷¹ The right not to be compelled to testify against oneself under Article 14 "must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused". In such cases, the burden of proof is on the state to show that statements of the accused are not made as a result of such pressure.¹⁷²

As mentioned *sections II and III above*, cases before the Committee concerning Tajikistan show that while individuals tend to make incriminating or other voluntary statements in detention, they systematically retract their statements when appearing before the judge.¹⁷³ Courts however have tended to ignore allegations according to which confessions have been given under duress,¹⁷⁴ and such claims have sometimes been omitted from the trial transcript¹⁷⁵ while judges refused to summon police officers suspected of the ill-treatment.¹⁷⁶

¹⁶⁹ General Comment No. 32 (article 14 ICCPR), CCPR/C/GC/32, 23 August 2007, para.6.

¹⁷⁰ General Comment No. 32 (article 14 ICCPR), CCPR/C/GC/32, 23 August 2007, para.33.

¹⁷¹ General Comment No. 32 (article 14 ICCPR), CCPR/C/GC/32, 23 August 2007, para.6.

¹⁷² General Comment No. 32 (article 14 ICCPR), CCPR/C/GC/32, 23 August 2007, para.41.

¹⁷³ *Toshev v Tajikistan*, above note 34, para. 6.6; *Kurbonov v Tajikistan*, above note 4, para. 2.5; *Idieva v Tajikistan*, above note 12, para. 2.6; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.9 and 2.17; *Boimurodov v Tajikistan*, above note 13, para. 2.6; *Saidova v Tajikistan*, above note 10, para. 6.2.

¹⁷⁴ *Toshev v Tajikistan*, above note 34, paras. 1.12 and 6.6; *Sattorova v Tajikistan*, above note 15, para. 2.10; *Khuseynova and Butaeva v Tajikistan*, above note 12, paras. 2.9.a and 2.17.b; *Idieva v Tajikistan*, above note 12, para. 2.6.a; *Saidova v Tajikistan*, above note 10, para. 2.8.

¹⁷⁵ *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.9.a.

¹⁷⁶ *Idieva v Tajikistan*, above note 12, para. 2.6.c.

As a result, some individuals have been convicted on the sole basis of their forced “confessions”.¹⁷⁷

In the overwhelming majority of cases submitted to the Committee alleging torture or other ill-treatment in Tajikistan, applicants also argued that the court had been biased and acted in an accusatory manner,¹⁷⁸ in violation of the right to a fair trial under article 14(1).¹⁷⁹ For instance, in *Sattorova v Tajikistan*, the judge simply endorsed the position of the prosecution and often shouted at the accused and his relatives, contending that he was a liar and that he had told the truth during the preliminary investigation.¹⁸⁰ In the case of *Ashurov v Tajikistan*, the judge acted as a replacement to the prosecutor who was passive and unprepared. He followed the indictment verbatim and rejected all key arguments and requests of the defence. He asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court’s secretary to record only those testimonies establishing the accused’s guilt.¹⁸¹ As for witnesses speaking in favour of the accused, either because they can testify of the use of torture¹⁸² or exonerate the accused from any participation in criminal acts, the cases show that courts ignore their statements or refuse altogether to call them to testify.¹⁸³

Violations of Article 14 ICCPR identified in cases concerning Tajikistan often encompass heavy reliance by the judge on the evidence provided by the prosecution, in which case despite hearing different accounts of the facts, preference is given to the depositions allegedly obtained under torture, ill-treatment, or other duress, on the basis that the torture allegations are not substantiated by the case file.¹⁸⁴ In so doing, courts tend to put the burden of proof of the use of torture on the victim,¹⁸⁵ which clearly contravenes a well-established principle frequently reiterated by the Committee that in cases of alleged forced “confessions”, the burden is on the State to prove that statements made by the accused have been given of their own free will.¹⁸⁶ In *Dunaev v Tajikistan*, the Committee further recalled that:

“With regard to the burden of proof, it cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information [...]. In light of the fairly detailed description of the author on the circumstances of his son’s ill-treatment; the unavailability of any trial transcript or other court records; and in absence of any further explanations from the State party in this connection, the Committee decides that due weight must be given to the author’s allegations. Therefore, the Committee concludes that the facts, as presented in the present case, reveal a violation of the author’s son’s rights under articles 7 and 14, paragraph 3 (g), of the Covenant.”¹⁸⁷

Where the applicants raised violations of article 14 ICCPR in cases related to torture, or ill-treatment the Committee systematically recalled that “these allegations relate primarily to the evaluation of facts and evidence by the court” and that “it is generally for the courts of State

¹⁷⁷ *Kurbanova v Tajikistan*, above note 11, para. 7.5; *Sattorova v Tajikistan*, above note 15, para. 2.8; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.9.b.

¹⁷⁸ *Saidova v Tajikistan*, above note 10, paras. 2.8 and 3.4; *Dunaev v Tajikistan*, above note 5, para. 2.9; *Ashurov v Tajikistan*, above note 19, para. 2.8; *Toshev v Tajikistan*, above note 34, paras. 2.12 and 6.6.

¹⁷⁹ *Toshev v Tajikistan*, above note 34, paras. 2.12 and 6.6.

¹⁸⁰ *Sattorova v Tajikistan*, above note 15, para. 2.8.

¹⁸¹ *Ashurov v Tajikistan*, above note 19, para. 2.8.

¹⁸² *Karimov and Nursatov v Tajikistan*, above note 7, paras. 2.9.c and 6.4.

¹⁸³ *Dunaev v Tajikistan*, above note 5, par. 2.5; *Sattorova v Tajikistan*, above note 15, par. 2.8; *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, paras. 2.5.a and 2.6.

¹⁸⁴ *Karimov and Nursatov v Tajikistan*, above note 7, para. 4.5; ICJ, “Independence of the Legal Profession in Central Asia”, 2013, p. 61, available at <https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>.

¹⁸⁵ *Kurbanov v Tajikistan*, above note 4, para. 6.3.

¹⁸⁶ *Idieva v Tajikistan*, above note 12, para. 9.3; Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 49.

¹⁸⁷ *Dunaev v Tajikistan*, above note 5, para. 7.3.

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 justice".¹⁸⁸ Thus, in many cases, the Committee ultimately found the claims to be insufficiently substantiated.¹⁸⁹ In *Sattorova v Tajikistan*, the Committee concluded as follows:

"At the same time, the Committee notes however that the case file does not contain any pertinent information in this respect, in particular trial transcripts or other records, which would allow it to shed light on the allegation and allow it to ascertain whether Mr. Sattorov's trial indeed suffered from such fundamental defects. In these particular circumstances, the Committee considers that it cannot conclude to a violation of the alleged victim's rights under article 14, paragraph 1"¹⁹⁰.

However, in *Ashurov v Tajikistan*, the Committee found that based on "the uncontested information before the Committee, it transpires that the charges and evidence against the [accused] left room for considerable doubt, while their evaluation by the State party's courts was in itself in violation of fair trial guarantees of article 14, paragraph 3".¹⁹¹ In this case, the applicant provided detailed information and was able to demonstrate exactly how the Court had acted in a biased manner. Such bias included that fact that the Court denied all of his petitions, covering questions related to the legal basis for his detention, access to the entire case file and on the translation of the indictment into Russian, as he was not able to sufficient understand Tajik).¹⁹² In addition, the court hearing was conducted without Tajik-speaking counsel and without an interpreter; the judge amended the proceedings transcripts so that they said that the lawyer had been able to study the case; and the judge, when excluding the Tajik speaking lawyer from the proceedings said that it was not of importance which of the two lawyers would represent Ashurov as he "would be found guilty in any event."¹⁹³ Lastly, that the Court ignored evidence proving that the applicant was serving a prison term in another country at the time of the alleged offence.¹⁹⁴ Therefore, the Committee concluded that "[i]n the present case, the facts presented by the author, which were not contested by the State party, show that the State party's courts acted in a biased and arbitrary manner with respect to the above mentioned complaints and did not offer [the applicant] the minimum guarantees of article 14, paragraph 3 (a), (b) and (e)".¹⁹⁵

Finally, this case discussed the principle of presumption of innocence, which was also found to have been violated by Tajikistan. The Committee stated the following:

"[...] by reason of the principle of presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proven beyond reasonable doubt. (...) From the material available to it, the Committee considers that Ashurov was not afforded the benefit of this doubt in the criminal proceedings against him. In the circumstances, the Committee concludes that his trial did not respect the principle of presumption of innocence, in violation of article 14, paragraph 2".¹⁹⁶

Examination of witnesses

According to ICCPR Article 14.3(e), in the determination of any criminal charge against him, everyone shall be entitled, in full equality to examine, or have examined, the witnesses against

¹⁸⁸ *Karimov and Nursatov v Tajikistan*, above note 7, para. 6.3; *Boimurodov v Tajikistan*, above note 13, para. 6.5.

¹⁸⁹ *Karimov and Nursatov v Tajikistan*, above note 7, para. 6.4; *Sattorova v Tajikistan*, above note 15, para. 8.6.

¹⁹⁰ *Sattorova v Tajikistan*, above note 15, para. 8.6.

¹⁹¹ *Ashurov v Tajikistan*, above note 19, para. 6.7.

¹⁹² *Ashurov v Tajikistan*, above note 19, para. 2.7.

¹⁹³ *Ashurov v Tajikistan*, above note 19, para 2.8.

¹⁹⁴ *Ashurov v Tajikistan*, above note 19, para 2.10.

¹⁹⁵ *Ashurov v Tajikistan*, above note 19, para. 6.6.

¹⁹⁶ *Ashurov v Tajikistan*, above note 19, para. 6.7.

him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him¹⁹⁷. Violations of this guarantee have been alleged on multiple occasions before the Committee in cases concerning torture in Tajikistan: judges have been reported to improperly intervene during some of the witnesses' depositions, interrupting them when they did not say what the authorities wanted them to say,¹⁹⁸ threatening them to force them to change their testimony¹⁹⁹ or limiting the lawyer's possibility to ask questions.²⁰⁰ Moreover, judges tend to ignore testimonies from witnesses stating that they do not recognize the accused as an author of the crime.²⁰¹

In *Khuseynova and Butaeva v Tajikistan*²⁰², the Committee recalled that:

"as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3(e), 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."²⁰³

Therefore, ungrounded refusal to call witnesses who could have testified on the alleged offences or on the accused's claims related to torture contravenes Article 14, paragraphs 1 and 3(e) and (g).²⁰⁴

However, this right is not absolute. In *Idieva v Tajikistan*, the Committee reiterated that Article 14, paragraph 3(e):

"does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or counsel, but only a right to have witnesses examined who are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within such limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess such evidence".²⁰⁵

In this particular case, the Committee noted that all the individuals mentioned in the lawyer's rejected motion could have provided relevant information regarding the claim of torture and ill-treatment presented by the accused.²⁰⁶ Therefore, the Committee concluded that the courts did not respect the requirement of equality between the prosecution and the defence in producing evidence and that it amounted to a denial of justice, in violation of article 14, paragraph 3(e).²⁰⁷ The Committee reached the same conclusions in the case of *Khuseynova and Butaev v Tajikistan*, in which, similarly, a forensic expert and witnesses could have confirmed that the "confessions" of the accused were obtained under duress.²⁰⁸

VI. Right to an effective remedy and investigation

An effective remedy

¹⁹⁷ Article 14, paragraph 3(e) ICCPR.

¹⁹⁸ *Boimurodov v Tajikistan*, above note 13, para. 2.4; *Saidova v Tajikistan*, above note 10, para. 3.1.

¹⁹⁹ *Boimurodov v Tajikistan*, above note 13, para. 2.4.

²⁰⁰ *Sharifova, Safarov and Burkhonov v Tajikistan*, above note 24, para. 2.5.c; *Karimov and Nursatov v Tajikistan*, above note 7, para. 2.9.e.

²⁰¹ *Khalilova v Tajikistan*, above note 44, para. 2.8.

²⁰² *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.5.

²⁰³ Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 39.

²⁰⁴ *Khomidova v Tajikistan*, above note 6, para. 6.5.

²⁰⁵ *Idieva v Tajikistan*, above note 12, para. 9.6.

²⁰⁶ *Idieva v Tajikistan*, above note 12, para. 9.6.

²⁰⁷ *Idieva v Tajikistan*, above note 12, para. 9.6.

²⁰⁸ *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.5.

Under Article 2(3) the State is obliged to provide for an effective remedy for violations under Article 7 of the ICCPR. In addition to effective protection of prohibition of torture and forms of ill treatment, article 2(3) requires of States to ensure that individuals also have "accessible and effective remedies to vindicate those rights."²⁰⁹ Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories; and forms the remedies might take include, inter alia, establishing appropriate judicial and administrative mechanisms for addressing claims under domestic law.²¹⁰ In its turn, the judiciary can enforce the ICCPR rights in many different ways, from direct application to application of comparable domestic provisions or interpretation of the latter in line with the Convention obligations.²¹¹

In light of article 7 there are two more important institutional factors in ensuring the effective remedy: established administrative mechanisms to investigate the allegations and national human rights institutions granted with powers that would enable them to contribute to this end.²¹²

With regard to the victims of violations, the right to an effective remedy under article 2(3), also includes a right to reparation: "[W]ithout reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."²¹³

In adjudicating the communications, the Committee may also mention explicit remedies that should be offered to the applicant, which often include payment of adequate compensation, initiation and pursuit of criminal proceedings to establish the responsibility for the victim's ill-treatment, a revision of the trial with the guarantees enshrined in the Covenant, immediate release of the victim and, in any case, the obligation for the State to prevent similar violations in the future.²¹⁴

The duty to carry out prompt and independent investigation and prosecution for committing the crime of torture

In accordance with Article 2.3 ICCPR read together with Article 7 ICCPR, states parties have a duty to investigate promptly and impartially any allegation of torture or cruel, inhuman or degrading treatment.²¹⁵ Investigations should not depend on the receipt of a complaint but should be initiated as soon as there are grounds for believing that ill-treatment has occurred.²¹⁶

The Human Rights Committee in its General Comment No. 31 reiterated that Article 2(3) contains general obligation of State Parties to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.²¹⁷ To this end appropriate judicial and administrative mechanisms should be established to give effect to this obligation and to address claims under domestic law.²¹⁸ Failure by a State to investigate allegations of violations [of torture and ill-treatment] - promptly, thoroughly and effectively through independent and impartial bodies, could in and of itself give rise to a separate breach of ICCPR.²¹⁹ Provisional or interim measures might be required [in the course of an investigation] to avoid continuing violations at the earliest possible opportunity,²²⁰ which maybe crucial in instances of torture and ill-treatment.

²⁰⁹ General Comment No. 31, para. 15.

²¹⁰ General Comment No. 31, para. 15.

²¹¹ General Comment No. 31, para. 15.

²¹² General Comment No. 31, para. 15.

²¹³ General Comment No. 31, para. 16.

²¹⁴ *Dunaev v Tajikistan*, above note 5, para. 9; *Ashurov v Tajikistan*, above note 19, para. 8.

²¹⁵ Article 2, paragraph 3 ICCPR; Human Rights Committee, General Comment n° 20, adopted on 3 April 1992, para. 14; *Sattorova v Tajikistan*, above note 15, para. 8.4; *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 8.3.

²¹⁶ *Alzery v Sweden*, Human Rights Committee Communication 1416/2005 (2006), para. 11.7.

²¹⁷ General Comment No. 31, para. 15.

²¹⁸ General Comment No. 31, para. 15.

²¹⁹ General Comment No. 31, paras. 15, 18.

²²⁰ General Comment No. 31, para. 19.

These principles were further discussed in *Boboyev v Tajikistan*:

"The Committee recalls its jurisprudence, according to which, States parties, by arresting and detaining individuals, take the responsibility to care for their life, and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights such as those protected by article 6 of the Covenant. The Committee also recalls its general comment No. 31, in which it stated that, where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 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 it and its authorities"²²¹.

As raised above in section V, judges often ignore allegations of ill-treatment and consider them as extra-legal means of defence. In such cases, instead of launching an official inquiry, the State is often satisfied with a rather superficial check.²²² Moreover, courts tend to refuse lawyers' motions aiming to substantiate torture allegations. For example, in *Sattarova v Tajikistan*, a request for a medical examination that could ascertain the physical condition of the accused and the commission of ill-treatment was ignored by the court.²²³

Action towards investigation was under taken in a number of cases considered by the Committee, but appeared to not be effective. In the case of *Boboyev v. Tajikistan*, an investigation was launched against police officers 14 days after the death of the victim. Yet, while two suspects were identified, the investigation itself was suspended three times owing to the suspects' "health issues."²²⁴ Moreover, access to the criminal file was never allowed to the victim's relatives, leading the Committee to state that, for this reason alone, the investigation itself could not be regarded as effective and "capable of leading to the identification and punishment of those responsible for the events in question".²²⁵ It consequently concluded that as the State party had failed to launch a prompt, impartial and effective investigation into the circumstances of the death of the victim and his allegations of torture and ill-treatment, it had not provided an effective remedy, in violation of article 2, paragraph 3 ICCPR, read in conjunction with articles 6, paragraph 1, and 7 ICCPR.²²⁶

In *Ashurov v Tajikistan*, the court referred the case to the prosecutor to enquire about torture allegations and to clarify gaps and discrepancies in the case.²²⁷ However, the investigator who initially tampered with the case evidence and participated in the torture of the detainee was in charge of the inquiry and allegedly once more tampered with evidence, destroying certain key documents in the case file.²²⁸ While the Committee did not discuss this fact separately, it concluded that Tajikistan's courts acted in a biased and arbitrary manner and did not offer the applicant the minimum guarantees of article 14, paragraph 3 (a), (b) and (e) ICCPR.²²⁹

In *Kurbonov v Tajikistan*, an investigation into allegations of torture was launched and five police officers were subjected to disciplinary measures and prosecuted.²³⁰ However, even in this case, the court dismissed the claim on the ground that the suspected police officers denied any wrongdoing and that the accused did not present any unquestionable evidence that he

²²¹ *Boboyev v Tajikistan*, above note 6, para. 9.3.

²²² *Karimov and Nursatov v Tajikistan*, above note 7, paras. 4.6 and 4.8.

²²³ *Sattorova v Tajikistan*, above note 15, para. 8.3.

²²⁴ *Boboyev v Tajikistan*, above note 6, paras. 2.7 and 9.6.

²²⁵ European Court of Human Rights, *Oğur v. Turkey* (application No. 21594/93), judgment of 20 May 1999, para. 93; *Boboyev v Tajikistan*, above note 6, para. 9.6.

²²⁶ *Boboyev v Tajikistan*, above note 6, para. 9.6.

²²⁷ *Ashurov v Tajikistan*, above note 19, para. 2.4.

²²⁸ *Ashurov v Tajikistan*, above note 19, para. 2.5.

²²⁹ *Ashurov v Tajikistan*, above note 19, para. 6.6.

²³⁰ *Kurbonov v Tajikistan*, above note 4, para. 2.2.

was beaten by them.²³¹ The Committee ruled that, in so doing, the court had violated articles 7 and 14 paragraph 1 ICCPR, arguing that:

“the facts presented by the author clearly demonstrate that the Supreme Court acted in a biased and arbitrary manner with respect to the complaints related to the [detainee’s] torture during the preliminary detention, because of the summary and unreasoned rejection of the evidence, properly and clearly documented by [him], that he had been tortured. In their effect, the action of the courts placed the burden of proof on the [accused], whereas the general principle is that the burden of proof that the confession was made without duress is on the prosecution”.

A serious inquiry seems more likely to succeed in cases where the torture or ill-treatment has led to death of the detainee. However, investigations may fail the criteria of promptness and effectiveness required by international human rights law.²³² The right to life is protected by article 6 of the ICCPR, and the Human Rights Committee in its General Comment 36 has set out detailed requirements for investigations involving arbitrary deprivation of the right to life.²³³

Cases against Tajikistan lastly demonstrate that not only have the authorities failed to take appropriate measures but they have also contributed to concealing the facts relating to torture or other ill-treatment. In particular, in *Khuseynova and Butaeva v Tajikistan*, the detention centre allegedly refused to accept the transfer of a detainee because of the many injuries and bruises visible on his body; thus, it waited for a month before it could attest to his healthy condition by medical certificate.²³⁴

VII. Follow-up to Committee decisions

Once the Committee finds a violation and communicates it to the State party, it calls on it to implement the decision:

“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 90 days, information about the measures taken to give effect to these Views. The State party is also requested to publish the Committee’s Views”.²³⁵

The Committee stressed the nature of its findings in its General Comment 33 point out that:

“While the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and

²³¹ *Kurbonov v Tajikistan*, above note 4, para. 6.3.

²³² Human Rights Committee, General Comment No. 20, adopted on 3 April 1992, para. 14.

²³³ General Comment No. 36 (article 6 ICCPR), CCPR/C/GC/36, 30 October 2018. Some of these requirements include mandatory reporting and investigations of lethal incidents caused by law enforcement officers (para. 13) or in custody (para.29) and preventive measures in cases involving private entities (para.21); establishing adequate institutions for investigating (para.19); duty to investigate excessive use of force leading to deaths (para 27); independent, impartial, prompt, thorough, effective, credible and transparent investigations (para.28); cooperate in good faith with international mechanisms of investigation and prosecutions (para 28).

²³⁴ *Khuseynova and Butaeva v Tajikistan*, above note 12, para. 2.4.

²³⁵ Among many others, see *Aliboeva v Tajikistan*, above note 5, para. 9.

independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.”²³⁶

In order to monitor the implementation of the views, the committee established a procedure of a Special Rapporteur for follow-up on Views.

1. The Committee shall designate a Special Rapporteur for follow-up on Views adopted under article 5 (4) of the Optional Protocol, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee’s Views.
2. The Special Rapporteur may make such contacts and take such action as appropriate for performance of the follow-up mandate. The Special Rapporteur shall make such recommendations for further action by the Committee as may be necessary.
3. The Special Rapporteur shall regularly report to the Committee on follow-up activities.
4. The Committee shall include information on follow-up activities in its annual report.²³⁷

Besides, in its Concluding Observations following consideration of the period report of a State, the Committee may follow up on the views regarding individual communications if the State fails to effectively implement them. In this respect, the HRC, following the review of the Tajikistan report in 2019, noted in its Concluding Observations to the third Periodic review that:

7. The Committee remains concerned (see CCPR/C/TJK/CO/2, para. 4) about the State party’s continuing failure to implement the Views adopted by the Committee under the Optional Protocol and the lack of effective mechanisms and procedures for authors of communications to seek, in law and in practice, the full implementation of the Views (art. 2).

8. The Committee recalls its general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol. The State party should take all the measures necessary, including legislative measures, to ensure that mechanisms and appropriate procedures are in place to give full effect to the Views adopted by the Committee so as to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant, in accordance with article 2 (3) of the Covenant. It should promptly and fully implement all pending Views issued with respect to it.²³⁸

VIII. Conclusion

This brief overview of the Views of the Committee’s in regard to Tajikistan reinforces the conclusions by Committee in its 2019 review of Tajikistan that Article 7 violations are a central concern in respect of Tajikistan’s overall human rights performance. These cases illustrate the systemic nature of torture and ill-treatment in pretrial detention in Tajikistan. They also show how reliance on torture and ill-treatment is entrenched by the tolerance within the justice system for these violations of human rights and the failure to hold perpetrators accountable and provide victims with an effective remedy and reparation.

Not only do the cases of torture and ill-treatment communicated to the Committee demonstrate the nature and means of the harm inflicted but they also indicate when such treatment is likely to take place. The pattern shows it typically occurs during the first hours

²³⁶ General Comment 33, para. 11.

²³⁷ Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.11, 9 January 2019, Rule 106.

and days in custody, when the alleged victim still is at the hands of the police.²³⁹ Furthermore, it appears that these acts are facilitated by the lack of respect of the national criminal procedure.

In particular, the cases show that problems with access to qualified legal representation rendered by independent legal professionals are a key factor in undermining protection from torture and ill-treatment, and effective remedies when torture takes place. While independent lawyers may face threats and impediments in exercising their duties diligently State appointed lawyers may further aggravate the violations those in detention.

The issue of unfair trial in Tajikistan runs like a thread through all the cases of the Committee concerning torture. The problem is not a mere inability of the judiciary to remedy gross human rights violations such as torture and ill-treatment, but an apparent indifference towards such allegations, allowing them to be perpetrated with impunity and undermining the presumption of innocence.

Addressing impunity and lack of effective remedies for torture and other violations of human rights in pre-trial detention appears to be critical for their prevention. The cases show the need for perpetrators of torture to be held to account, for effective remedies for the victims of such violations and for effective steps of non-repetition of such violations in the future.

Finally, it should be stressed that the finding of the violation of a right of the ICCPR is an important step in providing an effective remedy by the national system of a State which has recognized the competence of the Committee to consider individual communications. It is therefore important that the findings of the Committee are effectively implemented and that domestic remedies are provided in cases in which the Committee has found a violation, and in other analogous cases. However, an analysis such as this one, should also be used to take legislative, administrative and policy measures in order to address the systemic problems which have allowed these grave violations of human rights to take place within the national justice system in the first place.

²³⁹ *Ashurov v Tajikistan*, above note 19, para. 2.2 and 3.1; *Kipro v Tajikistan*, above note 14, paras. 2.3 and 2.4; *Toshev v Tajikistan*, above note 34, paras. 2.5 to 2.9; *Dunaev v Tajikistan*, above note 5, par. 2.3.



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BOBOEV V TAJIKISTAN

Human Rights Committee

**Views adopted by the Committee under article 5 (4) of the
Optional Protocol, concerning communication No.
2173/2012*, ****

<i>Communication submitted by:</i>	Dzhuraboy Boboev (represented by counsel, Sergei Romanov)
<i>Alleged victims:</i>	The author and his deceased son, Ismonboy Boboev
<i>State party:</i>	Tajikistan
<i>Date of communication:</i>	9 July 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 July 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2017
<i>Subject matter:</i>	Torture and death of the author's son in police custody
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; prompt and impartial investigation of torture
<i>Articles of the Covenant:</i>	6 (1) and 7, separately and in conjunction with 2 (3)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)
1. The author of the communication is Dzhuraboy Boboev, a Tajikistan national, born in 1954. Mr. Boboev submits the present	

*

Adopted by the Committee at its 120th session (3-28 July 2017).

**The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

communication on his own and on behalf of his deceased son, Ismonboy Boboev. He claims a violation by Tajikistan of his son's rights under articles 6 (1) and 7, read separately and in conjunction with article 2 (3); and his own rights under article 7, read separately and in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for the State party on 4 April 1999. The author is represented by counsel.

The facts as submitted by the author

2.1 For several years,²⁴⁰ the author's son, Ismonboy Boboev, had been residing in the Russian Federation and had acquired that country's citizenship. The author's son travelled to Tajikistan to visit his parents and take back his daughter, who was visiting her grandparents.

2.2 On 19 February 2010, at around noon, the author's son was arrested in the city of Isfara. The arrest occurred near the city's main mosque, and the arresting officers informed the author's son that he was suspected of membership in the extremist organization called "The Islamic Movement of Turkestan".²⁴¹ When friends of the author's son noticed his absence, they called his mobile phone. The phone was answered by officer F.S., who introduced himself as a police officer and informed the friends that Ismonboy Boboev had been arrested and subsequently transferred to the city of Khudzhand.

2.3 The author claims that he immediately contacted the police departments in both Isfara and Khudzhand. Both police departments, however, refused to provide any information relating to his son's whereabouts. On 20 February 2010, the author was informed that his son was dead.

2.4 Upon receiving this information, the author went to the police department in Khudzhand and requested to see the record of his son's arrest. The police refused to provide any documents. The author then demanded to see his son's body. He was taken to the criminal forensics department where his son's body was kept.

2.5 The author's son's body had clear signs of beating, bruises below the knees and dark marks of what he thought were electric burns on his fingers. The author requested a document recording the signs of torture and that his son had died as a result of beating. The medical experts refused to issue such a document and insisted that the author's son had arrived at the police station with bruises and electric burns and his death occurred because "he choked on his own tongue".

2.6 On 23 February 2010, the author asked the police in Khudzhand to inform him about the investigation into his son's death. The police told him that they had not launched such an investigation since there was no report by forensics experts as yet. The author demanded that an investigation be launched, nevertheless, and went to meet with the local administration. He also wrote letters to the President of Tajikistan, the Prosecutor General and other officials.

2.7 The criminal investigation into the death of Ismonboy Boboev was finally launched on 5 March 2010, some 14 days after his death. The investigation named F.S. and A.M., two officers of the Sughd Region police who had arrested Ismonboy Boboev, as suspects.

²⁴⁰ The author does not specify exact dates.

²⁴¹ According to the author, the arrest was carried out by the Office for Combating Organized Crime, Department of Internal Affairs, Sughd Region.

2.8 On 10 March 2010, the criminal forensics experts issued their first report. The report stated that the cause of death was “mechanical asphyxiation” as a result of swallowing one’s own tongue. The report, however, did not state why the author’s son had swallowed his tongue. On 29 March 2010, in addition to the initial charge of murder, the suspects, F.S. and A.M., were also charged with abuse of power, and on 31 March 2010, with extortion. On an unknown date, all three criminal charges were combined into one.

2.9 The author requested that another autopsy be performed. That was done and the results were issued on 6 April 2010 by the State Regional Centre for Criminal Forensics. This second forensic medical examination concluded that the author’s son died of an electrical injury and severe heart and respiratory failure, which, the author submits, shows clearly that his son was tortured and died as a result of torture and ill-treatment.

2.10 On 25 June 2010, the criminal case was “suspended” owing to health issues of the two suspects, police officers F.S. and A.M. The case remains suspended as of the date of the submission of the present communication. During that time, F.S. left the police force on his own volition, and A.M. was promoted to Deputy Chief of the Sughd Regional Police Department. In 2011, A.M. was dismissed from the police force.

2.11 The author filed numerous complaints, including with the Prosecutor’s Office, the President of Tajikistan and other government agencies, requesting that they facilitate an investigation into the death of his son. The author received two replies from the Prosecutor’s Office of the Sughd Region, dated 15 July 2010 and 7 February 2012, stating that the Prosecutor’s Office was continuing the investigation. The Prosecutor’s Office informed the author that it was taking steps to interview a key witness, N.M., who resided in the Russian Federation.²⁴²

2.12 On 3 October 2011, the author was able to obtain legal assistance from the non-governmental organization, “Independent Centre for Protection of Human Rights”. On 7 October 2011, counsel for the author requested the Prosecutor’s Office of the Sughd Region and the Prosecutor General’s Office permission to access the files of the criminal investigation. The request was rejected based on article 42, paragraph 2 (8) of the Criminal Procedure Code of Tajikistan, which states that victims in criminal cases may obtain access to the files only after completion of the investigation.

2.13 On 20 October 2011, the author filed a complaint to the Constitutional Court of Tajikistan, requesting it to pronounce on whether article 42, paragraph 2 (8) of the Criminal Procedure Code of Tajikistan was in compliance with the provisions of the Constitution of Tajikistan, the provisions of articles 6 and 7, read in conjunction with article 2 (3), of the International Covenant on Civil and Political Rights, and the provisions of article 2 (3) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 15 May 2012, the Constitutional Court of Tajikistan rejected the author’s complaint, declaring the provisions of article 42 to be constitutional, and stating that the examination of the criminal case file during the preliminary investigation “would weaken” the investigation process.

²⁴² N.M. was recognized as a witness and as a victim, since he claimed to have been tortured by the same police officers. The results of that interview, if it ever occurred, were not provided by either the author or the State party.

The complaint

3.1 The author claims a violation of his son's rights under articles 6 (1) and 7 of the Covenant, because his son's death resulted from torture inflicted by the police officers, and the inadequate investigation conducted by the State party's authorities was an attempt to conceal the crimes committed by its agents. The author refers to the Committee's jurisprudence in *Eshonov v. Uzbekistan*²⁴³ and its general comment No. 6 (1982) on the right to life in support of his arguments.

3.2 The author also claims that, in the light of the violent death of his son, the State party was under an obligation to initiate an investigation into the circumstances of his son's death, including questioning witnesses and punishing those who were guilty; failure to do that constitutes a violation of his son's rights and his own rights under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant.

3.3 The author further claims a violation of his rights under article 7 of the Covenant, because for two years he has been living in constant psychological stress, as he did not know what exactly happened to his son, which, he alleges, constitutes cruel and inhuman treatment.

3.4 The author claims a violation of his rights under articles 6 (1) and 7, separately and in conjunction with article 2 (3), of the Covenant, with regard to the application of article 42 (2) (8) of the Criminal Procedure Code of Tajikistan, which denied his right to access the files of the criminal case. The author refers to the Committee's jurisprudence in *Sathasivam and Saraswathi v. Sri Lanka*²⁴⁴ and its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant in support of his argument that a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant. He also claims that access to the files of the criminal case was necessary to ensure an effective investigation of the case.

State party's observations on admissibility and merits

4.1 On 22 August 2013 and 3 April 2014, the State party provided its observations on the admissibility and merits of the present communication.

4.2 The State party submits that on 19 February 2010, the author's son was detained by several police officers on suspicion of being a member of the criminal group known as "The Islamic Movement of Turkestan". He was brought to the police station and on that same day, he died in the office of the chief of the police unit. The city Prosecutor's Office was informed about the incident.

4.3 The State party also submits that a forensic examination was ordered and carried out from 20 February to 2 March 2010. The examination concluded that the death of Ismonboy Boboev was the result of "mechanical asphyxiation" because Mr. Boboev swallowed his tongue, and not as a result of electric shock. The bruises on Mr. Boboev's hands and knees were considered as "light bodily injuries".²⁴⁵

²⁴³ Communication No. 1225/2003, Views adopted on 22 July 2010.

²⁴⁴ Communication No. 1436/2005, Views adopted on 8 July 2008.

²⁴⁵ The State party does not provide any further information regarding these injuries.

4.4 Given that Ismonboy Boboev's death occurred at the police station and further to the requests from the relatives of the deceased, the Prosecutor's Office initiated a criminal investigation under article 104 (murder) of the Criminal Code of Tajikistan.

4.5 Mr. Boboev's relatives disagreed with the findings of the initial autopsy examination and requested a second examination, which was carried out on 3 April 2010, and results were issued on 6 April 2010. The experts could not definitively ascertain the cause of death, but did not exclude that it was due to electric shock.

4.6 The Prosecutor's Office also questioned two suspects in the case, police officers A.M. and F.S. Both officers testified that they had no information regarding the cause of Ismonboy Boboev's death, and that they did not torture him while he was in detention.

4.7 The criminal investigation was later suspended owing to health issues of the two suspects. On 29 August 2012, the Prosecutor General's Office reopened the criminal investigation and referred it to the Prosecutor's Office of Sughd Region. The Prosecutor's Office could not reconcile the differences in the two autopsy reports and considered the "question of appointing a comprehensive criminal forensics examination".²⁴⁶

4.8 The State party further submits that the Prosecutor's Office had also considered "additional investigative actions".²⁴⁷ Given the foregoing, the investigation remains open and torture has not been established as the cause of Ismonboy Boboev's death. The initial delay in the investigation process was owing to the "non-obviousness of the circumstances of the incident", "absence of witnesses" and the "necessity to gather appropriate evidence".

4.9 The State party claims that the author did not exhaust all available domestic remedies and the communication must be considered inadmissible.

4.10 The State party denies the author's allegations that he did not have access to the results of the criminal investigation into his son's death. It states that Ismonboy Boboev's relatives "were informed" about the results of both autopsies. All complaints and requests sent by his relatives to different government agencies were carefully considered and "appropriate responses" were provided.

4.11 Under article 42 of the Criminal Procedure Code of Tajikistan, the victim in the criminal case and his or her representatives cannot have access to the criminal investigation case file while it is ongoing. Access can only be granted after the investigation is completed. That was confirmed by the Constitutional Court of Tajikistan.

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

5.1 On 4 November 2013 and 3 July 2014, the author provided his comments on the State party's observations on admissibility and merits. Specifically with regard to the State party's argument that the communication should be considered inadmissible, the author submits that he has exhausted all domestic remedies.

5.2 In addition to complaints to the Prosecutor's Office, which were submitted on 7 and 27 July 2012, the author also submitted a complaint to the Sughd Regional Court on 27 March 2013, claiming

²⁴⁶ The State party does not provide any further information on the examination.
²⁴⁷ No further information is provided.

that the suspension of the investigation into the allegations of torture of his son was unlawful. On 10 April 2013, the Sughd Regional Court agreed with the author and ordered the Prosecutor's Office to reopen the investigation. The cassation panel of the Sughd Regional Court and the Supreme Court of Tajikistan both affirmed that decision. Despite that decision on the part of the courts, the Prosecutor's Office did not conduct any investigative actions.

5.3 The author reiterates that he filed a complaint with the Constitutional Court of Tajikistan regarding the denial of his right to access materials of the criminal investigation.

5.4 As for the merits of the communication, the author contends that the State party failed to provide any information that would explain Ismonboy Boboev's death. The State party claims that the author's son was detained on suspicion of being a member of the "Islamic Movement of Turkestan". However, to date, neither the author nor his representatives have received a single piece of evidence confirming that his son was a member of this extremist group or that he had committed any crimes.

5.5 The author submits that the results of the autopsy dated 6 April 2010 indicate that Ismonboy Boboev's death could have occurred as a result of an electric shock.

5.6 The State party's submission also shows that the authorities were not interested in conducting a prompt, impartial and effective investigation of the torture allegations made by the author. The authorities failed to take any investigative actions prior to the submission of the complaint to the Committee as well as and after the submission of the complaint, despite numerous requests from the author.

Additional submissions by the parties

By the State party

6.1 On 19 September 2014,²⁴⁸ the State party reiterated its position regarding the present communication, emphasizing that it had done everything to investigate the circumstances of Ismonboy Boboev's death. The investigators questioned all relevant witnesses, including two police officers, A.M. and F.S., who had arrested him, and both denied involvement in his death.

6.2 It confirmed that the investigation had been suspended and reopened several times, but the suspensions were owing to the health issues²⁴⁹ of the two suspects in the case. On 6 February 2014, the investigation was reopened and remains open to this day. As submitted previously, the relatives of the deceased were kept informed of developments in the investigation.

By the author

7.1 The author submitted that the investigation could not be postponed indefinitely and still be considered effective. He drew the Committee's attention to the fact that the investigation had been suspended three times, each time, owing to "health issues" of the suspects.

7.2 The author submitted that he has requested access to the case file of the investigation into his allegations that his son had been

²⁴⁸ The State party made another submission on 15 March 2016, in which it reiterated its initial position.

²⁴⁹ The State party does not provide any explanation regarding these "health issues".

tortured but, to date, his requests have been rejected. He stated that, from 2010 until the date of the present comments to the Committee, he has been submitting complaints to the Prosecutor's Office and all have been either ignored or rejected.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee takes note of the State party's argument that the author failed to exhaust all available domestic remedies owing to the fact that there is an ongoing investigation into the allegations of torture resulting in death. The Committee recalls its jurisprudence that the State party "cannot avoid the Human Rights Committee's review of a communication merely by claiming an ongoing investigation"²⁵⁰ and without providing any details of the ongoing investigation, its results or prospects and estimated date of completion. Under the present circumstances and considering that seven years have passed since Ismonboy Boboev's death, the Committee considers that domestic remedies have been unreasonably prolonged.²⁵¹ The Committee accordingly finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.

8.4 In the Committee's view, for the purposes of admissibility, the author has sufficiently substantiated his claims under articles 6 (1) and 7, separately and in conjunction with article 2 (3), of the Covenant with regard to his and his son's rights, and in relation to access to information contained in the investigation file. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's claim that his son died as a result of the ill-treatment and torture he suffered in police custody. The Committee also notes that two autopsies were performed and the second autopsy, dated 6 April 2010, indicated that the cause of death could have been an electric shock. The State party denies those allegations, without providing an alternative plausible explanation of the circumstances of Ismonboy Boboev's death or explaining the so-called "light bodily injuries" or supporting its position with proper documentary evidence. The Committee observes

²⁵⁰ See communication No. 1820/2008, *Krasovskaya and Krasovskaya v. Belarus*, Views adopted on 26 March 2012, para. 7.4.

²⁵¹ See, inter alia, communications No. 1560/2007, *Marcellana and Gumanoy v. Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1-6.2; and No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 8.3.

that the State party failed to furnish it with any results of the investigation into Mr. Boboev's death. For example, the State party claims to have questioned witnesses, including two suspects, but has not provided the results of the questioning. It is also not clear to the Committee whether the State party's authorities questioned the author of the present communication, who witnessed his son's body bearing multiple signs of torture.

9.3 The Committee further notes the author's claim that the use of ill-treatment and torture on his son lead to the arbitrary deprivation of his son's life and his reference to the Committee's general comment No. 6 on the right to life. The Committee recalls its jurisprudence, according to which, States parties, by arresting and detaining individuals, take the responsibility to care for their life,²⁵² and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights such as those protected by article 6 of the Covenant.²⁵³ The Committee also recalls its general comment No. 31, in which it stated that, where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 7 is an obligation of means, not of result,²⁵⁴ 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 it and its authorities.

9.4 The Committee further recalls that the burden of proof in relation to factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.²⁵⁵ In that regard, the Committee notes, in particular, that the authorities refused to provide the author access to the case files of the investigation.

9.5 The Committee concludes that, in the light of the State party's inability to rely on an adequate and conclusive investigation to rebut the author's allegations that his son died as a result of torture that he sustained while in custody, and in the light of the information contained in the second autopsy report, which is consistent with the author's version of the events, there has been a violation²⁵⁶ of articles 6 (1) and 7 of the Covenant with regard to the rights of the author's son.²⁵⁷

9.6 As to the author's claims under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant that the State party failed in its obligation to properly investigate his son's death

²⁵² See communication No. 763/1997, *Lantsova v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

²⁵³ See *Sathasivam and Saraswathi v. Sri Lanka*, para. 6.4; and communication No. 1275/2004, *Umetaliev and Tashtanbekova v. Kyrgyzstan*, Views adopted on 30 October 2008, para. 9.2.

²⁵⁴ See communications Nos. 1917/2009-1918/2009, 1925/2009 and 1953/2010, *Prutina et al. v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.5.

²⁵⁵ See communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermitt v. Uruguay*, Views adopted on 21 October 1982, para. 9.6.

²⁵⁶ See communication No. 962/2001, *Mulezi v. Democratic Republic of the Congo*, Views adopted on 8 July 2004, para. 5.4.

²⁵⁷ See *Sathasivam and Sarawathi v. Sri Lanka*, para. 6.2; communications No. 1186/2003, *Titiahonjo v. Cameroon*, Views adopted on 26 October 2007, para. 6.2; No. 888/1999, *Telitsina v. Russian Federation*, Views adopted on 29 March 2004, para. 7.6; and *Dermitt v. Uruguay*, para. 9.2.

and his own allegations of torture and to take appropriate remedial measures, 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 articles 6 (1) and 7 of the Covenant.²⁵⁸ The Committee notes that the investigation into the allegations of torture and the subsequent death of Ismonboy Boboev was not carried out promptly and effectively, and while two suspects were identified, the investigation itself was suspended three times owing to the suspects' "health issues". No further explanations were provided in that respect.²⁵⁹ The Committee also notes that the author requested information regarding the investigation into the torture and subsequent death of his son, and that such requests were denied.²⁶⁰ It emphasizes that, when the case file is "inaccessible to the victim's close relatives",²⁶¹ the investigation itself cannot be regarded as an effective one that is "capable of leading to the identification and punishment of those responsible for the events in question".²⁶² Noting the failure of the State party to explain the necessity of keeping information from the author and the fact that no practical outcomes of the investigation are known, especially given the duration of the investigation, the Committee concludes that the State party has not justified its refusal to provide relevant information to the author. In the light of those circumstances and the unexplained suspensions of the investigation, the Committee concludes that the State party failed to launch a prompt, impartial and effective investigation into the circumstances of the death of the author's son and his allegations of torture and ill-treatment. As such, the State party has not provided an effective remedy, in violation of their rights under article 2 (3), read in conjunction with articles 6 (1) and 7.

9.7 The Committee observes that, although over seven years have elapsed since the death of the author's son, the author still does not know the exact circumstances surrounding it, and the State party's authorities have not indicted, prosecuted or brought anyone to justice in connection with this custodial death that occurred in highly suspicious circumstances. The Committee understands the continued anguish and mental stress caused to the author — the father of the deceased detainee — by this persisting uncertainty, which is amplified by the State party's refusal to provide any information about the investigation. In its view, that amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

10. 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 Ismonboy Boboev's rights under articles 6 (1) and 7, separately and in conjunction with article 2 (3), and of the author's

²⁵⁸ See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14, and its general comment No. 31, para. 18.

²⁵⁹ In *Eshonov v. Uzbekistan*, the Committee also noted the necessity of pursuing "investigations through an independent commission of inquiry or similar procedure" in cases of torture allegations, if "established investigative procedures are inadequate".

²⁶⁰ The Committee recalls the provisions of The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), according to which, "the participation of the family members or other close relatives of a deceased or disappeared person is an important element of an effective investigation", and that the State parties "must enable all close relatives to participate effectively in the investigation, though without compromising its integrity" (para. 35).

²⁶¹ European Court of Human Rights, *Oğur v. Turkey* (application No. 21594/93), judgment of 20 May 1999, para. 92.

²⁶² *Ibid.*, para. 93.

rights under article 7, separately and in conjunction with article 2 (3) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy, in the form of full reparation. Accordingly, the State party is obligated to, inter alia, take appropriate steps to: (a) conduct a prompt and impartial investigation into torture and the death of Ismonboy Boboev, and to prosecute and punish those responsible; (b) keep the author informed at all times about the progress of the investigation; and (c) provide the author with compensation for the loss of his son's life, for the torture that his son suffered, and for the pain and anguish that he, himself, suffered as a result of his son's death. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring 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 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 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 present 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.



United Nations

**International Covenant on
Civil and Political Rights**

CCPR/C/101/D/1499/2006

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TOSHEV V TAJIKISTAN

Human Rights Committee
One hundredth and first session
14 March - 1 April 2011

Views

Communication No. 1499/2006

<u>Submitted by:</u>	Temur Toshev (not represented by counsel)
<u>Alleged victims:</u>	The author's brother, Mukhammadruzi Iskandarov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	11 April 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's Rule 97 decision, transmitted to the State party on 4 October 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	30 March 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Conviction to prison term after an unlawful detention in isolation, in the absence of a lawyer, forced confessions, and unfair trial.
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment; arbitrary detention; habeas corpus; forced confessions; unfair trial.
<i>Procedural issue:</i>	None
<i>Articles of the Covenant:</i>	7; 9; 10; and 14
<i>Article of the Optional Protocol:</i>	2

On 30 March 2011, 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. 1499/2006.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (one hundredth and first session)

Concerning

Communication No. 1499/2006**

Submitted by: Temur Toshev (not represented
by counsel)

Alleged victim: The author's brother,
Mukhammadruzi Iskandarov

State party: Tajikistan

Date of communication: 11 April 2006 (initial
submission)

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

Meeting on 30 March 2011,

Having concluded its consideration of communication No. 1499/2006, submitted to the Human Rights Committee on behalf of Mr. Mukhammadruzi Iskandarov under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Mr. Temur Toshev, a Tajik national born in 1965, on behalf of his brother, Mr. Mukhammadruzi Iskandarov, also a Tajik national born in 1954, who, at the time of the initial submission was imprisoned in Dushanbe, Tajikistan. The author claims that his brother is a victim of violations, by Tajikistan, of his rights under article 7; article 9, paragraphs 1 and 3; article 14, paragraphs 1 and 3 (d), (e), and (g), of the International Covenant on Civil and Political Rights. Although the author does not invoke it specifically, the communication also appears to raise issues under article 14, paragraph 3 (b), of the Covenant. The author is unrepresented. The Covenant and the Optional Protocol entered into force in relation to Tajikistan on 4 April 1999.

The facts as presented by the author

2.1 Mr. Iskandarov was a member of the Democratic Party of Tajikistan since its establishment - no precise date is provided - and that he was the head of the party in one of the districts of Dushanbe

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

from 1990 to 1992. In 1997, following the signature of the Peace Agreement by the Government and the United Tajik Opposition, Mr. Iskandarov became the Chairman of the State Committee on Extraordinary Situations and Civic Defence. He worked there from 1997 to 1999, and obtained the grade of "Major-General". In 1999, by Presidential Decree, he was appointed as Director- General of the State Enterprise "Tajikcommunservice", where he worked until 2001. From 2001 to November 2003, he was the Director-General of the State enterprise "Tajikgaz".

2.2 At the sixth Congress of the Democratic Party of Tajikistan, in September 2003, Mr. Iskandarov was elected as the party's leader. The eighth Congress of the Democratic Party of Tajikistan re-elected him as the party's leader, and it was planned that he would stand for President of Tajikistan in the 2006 elections. In February 2005, Mr. Iskandarov headed the party's list of candidates at the Parliamentary elections.

2.3 In the meantime, on 9 January 2003, a criminal case was initially opened against his brother, for unlawful possession of firearms. The case was subsequently closed, for lack of evidence. On 27 August 2004, the Prosecutor's Office of the Tadjikadad district of Dushanbe was attacked. Mr. Iskandarov was accused of having been one of the assailants, even if, according to the author, when the attack in question was committed, his brother was in the Russian Federation.

2.4 On 25 November 2004, the Office of the Prosecutor-General of Tajikistan charged Mr. Iskandarov in absentia for crimes such as terrorism, banditry, unlawful possession of firearms, and misappropriation of State property. On 26 November 2004, the Office of the Prosecutor-General ordered Mr. Iskandarov's arrest and issued an international arrest warrant. On this basis, Mr. Iskanadarov was arrested, in the Russian Federation. His case was examined by the Babushkinsk Inter-district Prosecution Office of Moscow. The Prosecution Office rejected the Tajik request for extradition, and Mr. Iskandarov was released, on 4 April 2005.

2.5 On 15 April 2005, Mr. Iskandarov was unlawfully apprehended by unknown individuals in Moscow, and was kept in secret detention for two days. On 17 April 2005, he was unlawfully brought to Tajikistan by plane, and was immediately placed in custody at the Detention centre of the Ministry of Security in Dushanbe. He was kept there in isolation for ten days, and was provided only with bread and water during this period. He contracted a skin disease, but his requests for medical care were ignored, as were his requests to be represented by a lawyer.

2.6 On 26 April 2005, the Prosecutor-General announced, during a Press Conference, the recent arrest, in Tajikistan, of Mr. Iskandarov, and that was how his relatives became aware of his arrest. The following day, the family inquired about his whereabouts at the Ministry of Security, but was informed that he was not there, but that there was another individual detained, one Mr. R. S. The relatives asked for a food parcel to be given to Mr. R. S. and to be provided with a receipt to this effect signed by the detainee. The confirmation receipt they were provided with was signed by Mr. Iskandarov. On 28 April 2005, the family retained a private lawyer to represent Mr. Iskandarov, but the lawyer was not allowed to meet with his client. The lawyer complained immediately to the Office of the Prosecutor-General, but never received a reply.

2.7 On 28 April 2005, Mr. Iskandarov was interrogated, in the absence of a lawyer. The author explains that his brother signed a disclaimer prior to the interrogation, to the effect that he waived the right to be represented by a lawyer. During this interrogation, Mr. Iskandarov confessed guilt to all charges against him.

2.8 On 30 April 2005, he confirmed his confessions during his "official" interrogation as an accused, in the presence of his lawyer. The same day, the lawyers of Mr. Iskandarov announced at a press conference that their client had been unlawfully abducted in Russia, that he was kept at the Ministry of Security, and that his lawyers were unable to meet with him in private. According to the author, following that press conference, the lawyers began receiving threats.

2.9 While in detention at the Ministry of Security, Mr. Iskandarov was kept awake and interrogated every night. During the day, he was constantly questioned. Thus, he was not in his normal state, he was extremely weak, and could not react adequately. The administration of the Detention Centre refused to provide him with the medical products required for his skin disease, and only gave him sedatives. His lawyer complained to the Prosecutor's Office and the administration of the Detention Centre demanding that the night interrogations be stopped and that delivery of adequate medication be authorised. As a result, the night interrogations stopped for few days but were resumed shortly afterwards.

2.10 During the preliminary investigation of his brother's criminal case, the Supreme Court was examining the criminal cases of three other individuals suspected of having been Mr. Iskandarov's accomplices and of having committed various crimes under his leadership. Mr. Iskandarov's lawyers requested the Supreme Court to postpone the examination of these cases and to merge them with Mr. Iskandarov's one as the facts were identical, but their request was ignored, and the cases were examined separately.

2.11 The preliminary investigation ended on 1 June 2005, and the lawyers of Mr. Iskandarov, after having studied the content of the case file, requested that the case be put on hold pending the formulation of their written comments. When they submitted their comments on 4 June 2005, however, the lawyers understood that the case had already been transmitted to the court.

2.12 Mr. Iskandarov's criminal case was examined at first instance by the Criminal panel of the Supreme Court. When the trial started, Mr. Iskandarov retracted his initial confession and contended that it had been obtained under threats of physical reprisals, but the court ignored this. The lawyers complained on several occasions in court about the irregularities which had occurred during the preliminary investigation. In particular, they pointed out that Mr. Iskandarov was unlawfully apprehended in the Russian Federation and transferred to Tajikistan; that he was kept unlawfully at the premises of the Ministry of Security under another identity; that his lawyers were not allowed to see him in a timely manner; also that, later on, the lawyers were only able to meet with their client in the presence of officials; and that all their claims during the preliminary investigation were ignored. The court, however, rejected most of these claims, explaining that Mr. Iskandarov's lawyers had been present every time when investigation acts were carried out.

2.13 One of the charges against the author's brother related to the fact that he had hired his own private guards. According to the author, this was done with the explicit authorisation of the President of Tajikistan. In court, Mr. Iskandarov's lawyers requested to have

the President, the Minister of Security, the Prosecutor General, the Prosecutor of Dushanbe, the Prime Minister and other officials questioned. This request remained simply unaddressed by the court. The lawyers also asked to have questioned the officials who allegedly apprehended Mr. Iskandarov with a false Russian passport in Dushanbe, as well as other witnesses of the scene. The court, however, stated that as it had been unable to locate these individuals and that their interrogation was impossible.

2.14 On 5 October 2005, the court found Mr. Iskandarov guilty of several crimes and sentenced him to a prison term of 23 years, with the deprivation of his title of Major-General. On 18 January 2006, the Appeal panel of the Supreme Court upheld the sentence.

The complaint

3.1 The author claims that his brother's detention for ten days after his unlawful transfer from Russia, in complete isolation at the Ministry of Security, where he was provided only with bread and water, and without adequate medical care for the disease he contracted during that period of time, amounts to a violation of Mr. Iskandarov's rights under article 7 of the Covenant²⁶³.

3.2 The author further claims that his brother's rights under article 9, paragraph 1, of the Covenant were violated, because Mr. Iskandarov was unlawfully apprehended and brought to Tajikistan, and was unlawfully detained, in isolation at the premises of the Ministry of Security for ten days.

3.3 According to the author, Mr. Iskandarov's rights under article 9, paragraph 3, of the Covenant were also violated, as the decision for his arrest and placement in custody was taken by a prosecutor, i.e. an organ which cannot be seen as having the necessary objectivity and impartiality in dealing with such matters.

3.4 The author further claims that his brother's rights under article 14, paragraph 1, were violated. According to him, the court was biased and acted in an accusatory manner, and several of the lawyers' requests were not given due consideration. In addition, a number of witnesses could not be questioned; the court ignored the fact that Mr. Iskandarov was kept unlawfully isolated at the premises of the Ministry of Security and confessed guilt under pressure, in the absence of a lawyer. Also, at the beginning of the trial, Mr. Iskandarov retracted his confession on the counts of terrorism, banditry, and illegal possession of fire-arms, explaining that initially, he had confessed guilt under threats of physical reprisals, but the court ignored his statements. Mr. Iskandarov and his defence lawyers could only examine the trial transcript forty-one days after his conviction. The defence's written objections to the content of the trial transcript were ignored by the appeal body of the Supreme Court.

3.5 The author further claims that his brother's rights under article 14, paragraph 3 (d), of the Covenant have been violated. In spite of the Constitutional provisions to the effect that all persons deprived of liberty have the right to be assisted by a lawyer, and in spite of Mr. Iskandarov's requests to this effect, he only was represented by a lawyer starting as of 30 April 2005, despite having been apprehended already on 17 April 2005 and interrogated in the

²⁶³ The author quotes the Committee's General Comment No20 (44), on the prohibition against having detainees isolated, General comment No. 21, on incommunicado detention as factor which could facilitate torture ; and on long detentions in isolation; and the Committee's decision in communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994.

meantime. Throughout the preliminary investigation, Mr. Iskandarov could only meet with his lawyers in the presence of law-enforcement officials, and his lawyers' complaints in this connection were ignored. Although the author has not invoked it specifically, the communication appears also to raise issues under article 14, paragraph 3 (b), of the Covenant.

3.6 The author claims that his brother's rights under article 14, paragraph 3 (e), of the Covenant were also violated, as the court failed to ensure the presence and the questioning of important witnesses which, according to the author, could have contributed to the establishment of the objective truth.

3.7 Finally, the author claims that his brother's rights under article 14, paragraph 3 (g), of the Covenant were violated, as during his unlawful stay at the premises of the Ministry of Security, Mr. Iskandarov was forced, with the use of treats of physical reprisals, to confess guilt to a number of crimes, and his complaints thereon were disregarded.

State party's observations

4. By Notes Verbales of 4 October 2006, 21 November 2007, 26 February 2009, 23 February 2010, and 13 September 2010, the State party was requested to submit to the Committee information on the admissibility and the merits of the communication. The Committee notes that this information has still not been received. It regrets the State party's failure to provide any information with regard to the author's claims, and recalls²⁶⁴ that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal. In the absence of any observations on the admissibility and merits of the communication from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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 case is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement²⁶⁵. Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all

²⁶⁴ See, for example, *Khomidova v. Tajikistan*, communication No.1117/2002, Views adopted on 29 July 2004; *Khalilova v. Tajikistan*, communication No.973/2001, Views adopted on 30 March 2005; and *Aliboeva v. Tajikistan*, communication No.985/2001, Views adopted on 18 October 2005.

²⁶⁵ The Committee has noted that on 23 September 2010, the European Court of Human Rights rendered a judgment in relation to the author's arbitrary detention in the Russian Federation on 15 April 2005 and unlawful transfer to Tajikistan the next day, concluding that a violation of the author's rights had occurred, by the Russian Federation, under articles 3 («No one shall be subjected to torture or to inhuman or degrading treatment or punishment»), and 5, paragraph 1 ("Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) ..."), of the Convention for the Protection of Human Rights and Fundamental Freedoms.

available domestic remedies have been exhausted. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have also been met.

5.3 The Committee has noted, first, the author's claims of a violation of his brother's rights under article 7, of the Covenant, in light of his detention, isolated, at the Ministry of Security. It also noted the author's claims as to the lack of medical care and the inadequate food his brother was provided with during this period of time. Accordingly, it declares this part of the communication admissible under article 7 of the Covenant.

5.4 The Committee has noted further the author's claim of a violation of his brother's rights under article 14, paragraph 3 (d), of the Covenant. It considers, that the author's claim in raises also issues under article 14, paragraph 3 (b), of the Covenant. Accordingly, it declares this part of the communication admissible under article 14, paragraph 3 (b) and (d), of the Covenant.

5.5 The Committee considers that the author's remaining claims have been sufficiently substantiated, for purposes of admissibility, and declares them admissible, as raising issues under article 9, paragraphs 1 and 3; and article 14, paragraphs 1 and 3 (e) and (g), of the Covenant.

Consideration of the merits

6.1 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.

6.2 The Committee has noted the author's claim that his brother has been subjected to inhuman and degrading treatment by the authorities, since after having been unlawfully apprehended in the Russian Federation, on 15 April 2005, and unlawfully transferred to Tajikistan on 17 April 2005, Mr. Iskandarov was kept in isolation at the Detention Centre of the Ministry of Security for ten days, until 30 April 2010. During this time, according to the author, his brother was provided insufficient food, and contacted a skin disease without being provided with any medical treatment. In the absence of any observations on these specific claims, the Committee considers that due weight must be given to the author's claims. Accordingly, the Committee concludes that in the circumstances of the present case, the facts as submitted disclose a violation of Mr. Iskandarov's rights under article 7 of the Covenant.

6.3 The author has also claimed that the rights to liberty and security of his brother were violated, as on 15 April 2005, his brother was unlawfully apprehended in the Russian Federation and illegally brought to Tajikistan two days later. The State party has not presented any information in this connection. The Committee notes, first, that the author does not impute direct responsibility for his unlawful arrest and transportation to Dushanbe to the Tajik authorities. In addition, it considers that the material on file does not allow it to assess, the extent to which the State party's authorities were involved in Mr. Iskandarov's apprehension in Moscow and transportation to Dushanbe.

6.4 The Committee considers that what remains undisputed, however, in light of the information on file, is the fact that the brother of the author was placed in complete isolation, for ten days, at the premises of the Ministry of Security of Tajikistan immediately after

his arrival in Dushanbe on 17 April 2005, in the absence of a lawyer. The Committee recalls that deprivation of liberty is permissible only when it takes place on such grounds and in accordance with such procedure as are established by domestic law and when this is not arbitrary²⁶⁶. In the absence of any information by the State party to refute the author's specific allegations, and in the absence of any other pertinent information on file, the Committee considers that due weight must be given to this part of the author's allegations. Accordingly, it concludes that the facts as presented, amount to a violation of Mr. Iskandarov's rights under article 9, paragraph 1, of the Covenant.

6.5 The author has further claimed that, later on, the decision to have his brother officially arrested and placed in custody was taken by a prosecutor, i.e. an official who cannot be seen as having the necessary objectivity and impartiality, for purposes of article 9, paragraph 3. In the absence of any reply by the State party on this particular issue, the Committee decides that due weight must be given to the author's allegations. The Committee recalls²⁶⁷ that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention, and that it is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the present case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes, therefore, that there has been a violation of this provision.

6.6 The Committee has noted the author's claims that his brother's rights under article 14, paragraph 1, have been violated as the court was biased and acted in an accusatory manner, and that several of the lawyers' requests were not given due consideration. The author has also explained that the court has failed to ensure the presence and the questioning of important witnesses; the court also failed to take into consideration the fact that Mr. Iskandarov was kept unlawfully isolated at the premises of the Ministry of Security and confessed guilt under threats of physical reprisals there, in the absence of a lawyer, and that his complaints on this subject were disregarded. The author further claimed that at the beginning of the court trial, Mr. Iskandarov retracted his confession and explained that he had confessed guilt initially under threat of violence, but this was simply ignored; and that the lawyers' objections to the content of the trial transcript were disregarded on appeal. In the absence of any information from the State party refuting these detailed allegations, the Committee considers that due weight must be given to the author's claim. Accordingly, in the circumstances of the present case, the Committee concludes that the facts as presented amount to a violation of the author's brother's rights under article 14, paragraph 1, and 3 (e) and (g), of the Covenant.

²⁶⁶ See, for example, communications No. 1461/2006 & 1462/2006 & 1476/2006 & 1477/2006, *Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov v. Kyrgyzstan*, Views adopted on 16 July 2008, paragraph 12.2.

²⁶⁷ See, inter alia, *Rozik Ashurov v. Tajikistan*, communication No. 1348/2005, Views adopted on 20 March 2007, paragraph 6.5; *Kulomin v. Hungary*, communication No. 521/1992, Views adopted on 22 March 1996, paragraph 11.3; *Platonov v. Russian Federation*, communication No. 1218/2003, Views adopted on 1 November 2005, paragraph 7.2.

6.7 The Committee has further noted the author's claim that despite the provisions in national law to the effect that all persons deprived of liberty have the right to be assisted by a lawyer, and in spite of Mr. Iskandarov's requests to this effect, the latter was only represented by a lawyer as of 30 April 2005, whereas his actual apprehension took place on 17 April 2005 and he was interrogated during this period, including as an accused, on 28 April 2005, and was forced to confess guilt to serious charges. The author has also explained that after the announcement made by Mr. Iskandarov's lawyers, on 30 April 2005, to the effect that the author's brother had been unlawfully arrested and forced to confess guilt, the lawyers started receiving threats (see paragraph 2.8 above). The Committee has also noted the author's claim that throughout the preliminary investigation, his brother could only meet with his lawyers in the presence of law-enforcement officials, and that their complaints on this subject were ignored. The Committee considers that in the absence of a reply by the State party on these allegations, due weight must be given to the author's allegations. It concludes that by denying the author's brother access to the legal counsel of his choice for thirteen days, and by conducting investigative acts with his participation during this period of time, including interrogating him as a person accused of very serious crimes, the State party has violated Mr. Iskandarov's rights under article 14, paragraph 3 (b) and (d), of the Covenant²⁶⁸.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of the rights of the author's brother under article 7; article 9, paragraphs 1 and 3; and article 14, paragraphs 1, and 3 (b), (d), (e), and (g), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the brother of the author with an effective remedy, including either Mr. Iskandarov's immediate release or a retrial with all the guarantees enshrined under the Covenant, and also including appropriate compensation. The State party is under an obligation to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, Tajikistan has recognised 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 in case a violation has been established, the Committee wishes to receive, within one hundred eighty days, information from the State party about the measures taken to give effect to the Committee's Views. The State party is requested also to give wide publicity to 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.]

²⁶⁸ See, for example, *Paul Anthony Kelly v. Jamaica*, communication No. 537/1993, Views adopted on 15 February 1993, paragraph 9.2, and *Dimitry Gridin v. the Russian Federation*, communication No. 770/1997, Views adopted on 20 July 2000, paragraph 8.5.]

KIPRO V TAJIKISTAN

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HUMAN RIGHTS COMMITTEE
Ninety-seventh session
12-30 October 2009

RECOMMENDATION

Communication No. 1401/2005

<u>Submitted by:</u>	Mrs. Nadezhda Kirpo (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Pavel Kirpo
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	26 May 2005 (initial submission)
<u>Document References:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 June 2005 (not issued in document form).
<u>Date of adoption of Views:</u>	... October 2009

* All persons handling this document are requested to respect and observe its confidential nature.

Subject matter: Unlawful arrest; forced confessions obtained with use of beatings and torture, in the absence of a lawyer.

Procedural issue: level of substantiation of claims.

Substantive issues: Torture; forced confessions; habeas corpus; right to defense.

Articles of the Covenant: 7; 9; 14, paragraph 3 (d) and (g)

Article of the Optional Protocol: 2

The Working Group of the Human Rights Committee recommends that the Committee consider for adoption the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1401/2005. The text of the Views is appended to the present document.

[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-seventh session

concerning

Communication No. 1401/2005

Submitted by: Mrs. Nadezhda Kirpo (not represented by counsel)

Alleged victim: The author's son, Mr. Pavel Kirpo

State party: Tajikistan

Date of communication: 26 May 2005 (initial submission)

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

Meeting on ... October 2009,

Having concluded its consideration of communication No. 1401/2005, submitted to the Human Rights Committee on behalf of Mr. Pavel Kirpo 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

[Note: Explanatory footnotes in square brackets will be removed from the text of the final decision.]

1. The author of the communication is Mrs. Nadezhda Kirpo, a Tajik resident of Russian origin born in 1956, who claims that her son, Pavel Kirpo, also a Tajik resident of Russian origin born in 1977, is a victim of violations of his rights under article 7; article 9, paragraphs 1 and 3; and article 14, paragraph 3 (d), of the Covenant. Although the author does not invoke it specifically, the communication appears also to raise issues under article 14, paragraph 3 (g), of the Covenant. The author is unrepresented by counsel. The Optional Protocol entered into force for the State party on 4 April 1999.

The facts as presented by the author

2.1 The author contends that in 2000, her son was employed by the United Nations Organisation as an assistant to the head of the unit in charge of the project services in Tajikistan²⁶⁹. In May 2000, he was arrested by officials of the Ministry of Security, allegedly while trying to commit a robbery of 100 000 US dollars from the UN premises in Dushanbe. On 17 January 2001, the Dushanbe City Court convicted him to 15 years prison term, with confiscation of his belongings. On 23 May 2001, the Supreme Court confirmed the sentence.

2.2 The author explains that according to the Dushanbe City Court, her son planned to commit the robbery together with three other individuals (K., S., and B., whose whereabouts could not be established), and he had entered in a secret agreement with them, thus creating a criminal organised group. On 6 May 2000, he obtained illegally a revolver with a silencer and ammunition for it from K. On 7 May 2000, the author's son entered into the UN premises armed with the revolver, and as agreed with K., spoke to two security guards in an attempt to obtain their promise that they would not prevent him in committing the intended theft in exchange of 20 000 US dollars to be shared by them. The guards apparently agreed but in the main time they secretly contacted the Ministry of Security. An intervention group from this Ministry arrived shortly after and Mr. Kirpo was detained.

2.3 The author claims that on 7 May 2000, her son was brought to the premises of the Ministry of Security and was kept there until 20 May 2000. On 7 May 2000, the authorities detained also Mr. Kirpo's wife and kept her in the Ministry of Security until 9 May 2000. It was Mr. Kirpo's wife who informed the author of the communication, in a phone conversation of 8 May 2000, about their arrests and whereabouts. The author explains that her son was kept isolated and could not meet with his relatives. She only could meet with him on 19 May 2000, in the building of the Ministry of Security; he had lost a lot of weight and was all black and blue. Later on 19 May 2000, she spoke with a representative of the United Nations in Dushanbe about her son's arrest. The representative met with her son in presence of an investigator of the Ministry of Security, I.R.. According to the author, the representative later explained to her that her son was unable to speak, had broken ribs, and could move with big difficulties.

2.4 According to the author, during his detention at the Ministry of Security, her son was severely beaten and tortured with use of electricity on different parts of his body in order to force him to give depositions. He was also hit with police batons and metal sticks to the point that he had ribs broken and had difficulties in talking and moving. In court, the lawyers of the author's son invoked this issue on a number of occasions, but their complaints were simply ignored.

2.5 The author also claims that her son was detained unlawfully as after his apprehension on 7 May 2000, he was kept in the Ministry of Security until 20 May 2000. The author contends that during this period, her son was not represented by a lawyer nor was he officially informed of his procedural rights. Notwithstanding, he personally requested several times the investigators to be allowed to be represented by a lawyer but with no result. His arrest as a suspect of a crime was recorded on 20 May 2000 only, i.e. thirteen days after his actual apprehension. The same day, he was interrogated as a suspect, again in the absence of a lawyer²⁷⁰, and was officially charged with robbery. Following this, the author's son was detained for two days in the Ministry of Internal Affairs, and was placed in custody in an Investigation Detention Centre (SIZO) on 23 May 2000.

2.6 The author contends that her son's lawyers' complained during the court trial about the unlawful detention of her son for thirteen days, but the court, instead of pronouncing itself on the nature of the detention, simply ruled out that the period of time between 7 and 19 May 2000²⁷¹ is to be taken into account when calculating her son's prison term.

2.7 The author further claims that her son's official arrest – on 20 May 2000 – has been sanctioned by a Prosecutor on 23 May 2000 and not by a court. She contends that the prosecutor is not an organ which can exercise judicial authority.

²⁶⁹ The author provides neither the exact title of her son nor the exact name of the department in which he was employed.

²⁷⁰ The author explains that on 20 May 2000, she did hire a lawyer to represent her son, but the lawyer was allowed to participate in the proceedings on 23 May 2000 only.

²⁷¹ The author explains that her son remained in the Ministry of Security until 20 May, but the Court has affirmed that it was until 19 May 2000.

The complaint

3.1 The author claims that her son is a victim of violation of his rights under article 7, as he was beaten and tortured by officials of the Ministry of Security, and forced to confess guilt. Although the author does not invoke it specifically, this claim appear also to raise issues under article 14, paragraph 3 (g), of the Covenant.

3.2 The author also claims a violation of the rights of her son under article 9, paragraphs 1 and 3, as he was detained unlawfully for thirteen days, and as once it was decided to place him officially in pre-trial detention, the legality of this decision was not controlled by a court but by a prosecutor.

3.3 The author further invokes a violation of her son's right to defence as protected by article 14, paragraph 3 (d), given that he was not represented by a lawyer at the early stages of the investigation.

State party's failure to cooperate

4. The State party was invited to present its observations on the admissibility or/and the merits of the communication in June 2005, and reminders were sent in this respect in October 2006, March 2008, and February 2009. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims²⁷². It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.

[²⁷² See, for example, Communication No. 1208/2003, Kurbonov v. Tajikistan, views adopted on 16 March 2006, paragraph 4.]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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 and that it is uncontested that domestic remedies have been exhausted.

5.3 The Committee has noted the author's claim that she had hired a lawyer to defend her son on 20 May 2000 (date of the official indictment of her son), but the attorney was only allowed to participate in the proceedings as of 23 May 2000. The Committee observes that these allegations may raise issues under article 14, paragraph 3 (d), of the Covenant. In the absence of any other explanations in this respect by the parties, however, and in the absence of any pertinent information on file, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated for purposes of admissibility.

5.4 The Committee has noted the author's detailed allegations that, contrary to article 7 of the Covenant, her son was beaten and tortured and forced to confess guilt,. It considers that although the author has not invoked it specifically, this part of the communication also raise issues under article 14, paragraph 3 (g) of the Covenant. In the absence of any observations by the State party, the Committee considers that these allegations are sufficiently substantiated, for purposes of admissibility, and therefore the communication is admissible under article 7 and 14, paragraph 3 (g), of the Covenant.

5.5 The Committee has further noted the remaining part of the author's allegations under article 9 of the Covenant, as her son was kept for thirteen days in the Ministry of Security, with no legal counsel, and as the subsequent decision to have him placed in custody officially was not controlled by a court but by a prosecutor. The Committee considers that these allegations are sufficiently substantiated for purposes of admissibility, and declares them admissible.

Consideration on the merits

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

6.2 The Committee notes the author's claims that her son was detained unlawfully for thirteen days, in the Ministry of Security, with no access to lawyer and no possibility, for twelve days, to contact his relatives. During this period, he was beaten and tortured by investigators and forced to confess guilt in a robbery. The Committee notes that the author provides a fairly detailed description of the manner in which her son was beaten and on the method of torture used (electroshocks). The author also explains that the courts have failed in their duty to order a prompt inquiry on the alleged torture and ill-treatment of her son, and that they have disregarded the claims of the lawyers of her son in this respect. In the absence of any reply by the State party, the Committee considers that due weight must be given to the author's allegations.

6.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially²⁷³. It considers that in the circumstances of the present case, the facts as presented by the author and which are uncontested by the State party reveal a violation, by the State party, of the rights of the author's son under article 7 and article 14, paragraph 3 (g), of the Covenant.

6.4 The Committee notes that the author has claimed that her son was apprehended by officials of the Ministry of Security on 7 May 2000 and detained isolated, without being informed officially of the reasons of detention and without providing him with legal representation in

²⁷³ Human Rights Committee, General Comment No. 20, paragraph 14.

spite of his numerous requests to that effect, in the premises of the Ministry of Security until 20 May 2000, when he was officially charged. The author further claims that when the issue was raised by her son's lawyer during the trial, the court failed to give a legal qualification on the nature of the detention of her son during the thirteen initial days of detention. In the absence of any explanations by the State party in this respect, the Committee decides that due weight must be given to these allegations. The Committee recalls that article 9, paragraph 1 of the Covenant requires that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 9, paragraph 2, requires that anyone arrested shall be informed at the time of arrest of the reasons of arrest and of any charges against him. Even if in the present case, the facts as presented demonstrate that the authorities had sufficient grounds to apprehend the author's son as a suspect, the Committee considers that the fact that he was kept in detention for thirteen days before his actual arrest to be documented formally and without informing him officially of the reasons of his arrest, constitutes a violation of Mr. Kirpo's rights under article 9, paragraphs 1 and 2, of the Covenant.

6.5 The author has also claimed that her son was officially placed in pre-trial detention on 20 May 2000, but he was never brought before a court to verify the lawfulness of his detention and his detention was sanctioned by a prosecutor, in violation of article 9, paragraph 3, of the Covenant. The Committee recalls²⁷⁴ that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7; article 9, paragraphs 1-3; and article 14, paragraphs 3 (g), of the International Covenant on Civil and Political Rights.

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

9. 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.

[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.]

²⁷⁴ See, inter alia, *Rozik Ashurov v. Tajikistan*, Communication No. 1348/2005, Views adopted on 20 March 2007, paragraph 6.5; *Kulomin v. Hungary*, Communication No. 521/1992, Views adopted on 22 March 1996, paragraph 11.3; *Platonov v. Russian Federation*, Communication No. 1218/2003, Views adopted on 1 November 2005, paragraph 7.2

IDIEVA V TAJIKISTAN

United
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CCPR



**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. 1276/2004

Submitted by: Mrs. Zulfia Idieva (not represented by counsel)

Alleged victim: Mr. Umed Idiev (the author's son, deceased)

State party: Tajikistan

Date of communication: 13 April 2004 (initial submission)

Document references: Special Rapporteur's rule 92/97 decision, transmitted to the State party on 13 April 2004 (not issued in document form)

Date of adoption of Views: 31 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death penalty and subsequent execution in spite of request for interim measures of protection.

Substantive issues: Right to life; torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; fair hearing; impartial tribunal; right to be presumed innocent; right to be informed of the right to have legal assistance; right not to be compelled to testify against oneself or to confess guilt.

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

Articles of the Covenant: 6, paragraphs 1 and 2; 7; 9, paragraphs 1 and 2; 14, paragraphs 1, 2, 3(d), 3(e) and 3(g)

Article of the Optional Protocol: 2

On 31 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. 1276/2004.

[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. 1276/2004**

Submitted by: Mrs. Zulfia Idieva (not represented by counsel)

Alleged victim: Mr. Umed Idiev (the author's deceased son)

State party: Tajikistan

Date of communication: 13 April 2004 (initial submission)

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

Meeting on 31 March 2009,

Having concluded its consideration of communication No. 1276/2004, submitted to the Human Rights Committee on behalf of Mr. Umed Idiev 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 is Mrs. Zulfia Idieva, a Tajik national born in 1957. She submits the communication on behalf of her son, Mr. Umed Idiev, also a Tajik national born in 1979. At the time of submission of the communication, the victim was detained on death row in Dushanbe, awaiting execution, after a death sentence imposed on him by the Judicial Chamber for Criminal Cases of the Supreme Court on 24 February 2003. The author claims violations by Tajikistan of her son's rights under article 6, paragraphs 1 and 2; and article 7; article 9, paragraphs 1 and 2; article 14, paragraphs 1, 2, 3(d) and 3(g), of the International Covenant on Civil and Political Rights. She is unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party, on 13 April 2004²⁷⁵, not to execute the author's son, so as to enable the Committee to examine his case. This request was reiterated by the Committee on 26 April 2004. By note of 11 May 2004, the State party informed the Committee that the Government Commission on Ensuring Compliance with International Human Rights Obligations requested the Supreme Court, General Prosecutor's Office and the Ministry of Justice to consider Mr. Idiev's criminal case and to provide the State party's observations to the Committee within the deadline stipulated. On 20 May 2004, the State party informed the Committee that Mr. Idiev's death sentence had been carried out on an unspecified date, as the Committee's request had arrived too late.

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

²⁷⁵ The Committee's request was sent to the State party's Permanent Mission to the United Nations by ordinary mail, on 13 April 2004. On 14 April 2004, the Committee's request under rules 92 and 97 of its rules of procedure was faxed to the Permanent Mission and to the Ministry of Foreign Affairs of Tajikistan.

1.3 On 28 May 2004, the author provided a copy of her son's death certificate, stating that Mr. Idiev was executed on 24 April 2004, i.e. 11 days after the Committee's request not to carry out his execution was duly addressed to the State party. On 3 June 2004, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to provide it with detailed information on the time and circumstances of Mr. Idiev's execution. No reply to this request has been received from the State party.

The facts as presented by the author

2.1 Towards the end of 1997, one Rakhmon Sanginov created a criminal gang, which began to commit robberies, murders and to take hostages. By force and using death threats, he coerced young men from the district where his gang was operating to join the gang and to commit crimes. Among many others, Mr. Idiev was thus forced to become a member of Mr. Sanginov's gang in February 1998. He deserted in April 1998.

2.2 On 12 August 2001, officers of the Organised Crime Department (OCD) of the Ministry of Interior came to Mr. Idiev's home to arrest him. As he was not at home then, the author herself was taken by OCD officers to their premises and kept there for the next two days. On 14 August 2001, Mr. Idiev was arrested by OCD officers; his mother was released the same day. For five days, Mr. Idiev was detained on OCD premises and allegedly subjected to beatings with truncheons and electric shocks to various parts of his body. He was forced to confess to having committed a number of crimes, including murders and robberies. He did not have access to a lawyer, and his rights were not read to him. On 19 August 2001, an OCD officer for the first time officially reported to his supervisors about Mr. Idiev's arrest.

2.3 On 23 August 2001, a protocol of Mr. Idiev's detention of short duration was drawn up. It mentioned murder under aggravating circumstances (article 104, part 2, of the Criminal Code). The same day, he was placed in a "temporary confinement ward" (IVS). He was forced to tell a doctor who attested to his health condition prior to the transfer to IVS that he had not been ill-treated while in detention; such medical certificate was a prerequisite for the transfer.

2.4 Mr. Idiev's arrest warrant was issued by a prosecutor on 26 August 2001. The next day, he was interrogated as a suspect and took part in the reconstruction of the crime at the crime scene, on both occasions in the absence of a lawyer. The author's criminal case was opened by the General Prosecutor's Office on 31 August 2001.

2.5 On 3 September 2001, before being formally read the charges against him, Mr. Idiev was for the first time assigned a lawyer, after written request by the investigator. When the interrogation ended, the investigator invited the lawyer, one Kurbonov, who signed the interrogation protocol, although Mr. Idiev had never seen the lawyer before and was unaware that he had been assigned to him. Subsequently, this lawyer participated in no more than two investigative actions, namely, Mr. Idiev's interrogation as an accused and presentation of an additional count of murder on 12 November 2001. The reconstruction of the crime at the crime scene, however, was carried out on 17 October 2001 in the absence of the lawyer.

2.6 The trial of Mr. Idiev by the Judicial Chamber for Criminal Cases of the Supreme Court took place from 3 May 2002 to 24 February 2003. Although he was represented by a lawyer assigned by the court, the author claims that her son's trial was unfair and that the court was partial as appearing below:

a) In court, Mr. Idiev retracted his confessions obtained under duress during the pre-trial investigation. He argued that the law enforcement officers had used unlawful methods, including torture, during the interrogations and forced him to testify against himself. His testimony was allegedly ignored by the presiding judge, because he was unable to provide corroborating evidence, such as a medical and/or forensic certificate. In court, he admitted that while he was still a member of Mr. Sanginov's gang, he had killed the neighbours' son by inadvertently pulling his rifle's trigger. He explained that he had no intention to kill, and extended his apologies to the boy's parents.

b) Mr. Idiev was sentenced to death exclusively on the basis of his own confessions obtained by unlawful methods during the pre-trial investigation.

c) The court dismissed a motion submitted by his lawyer to summon and examine in court OCD officers who had arrested him on 14 August 2001 and illegally detained him until 19 August 2001, as also the investigator.

2.7 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Idiev guilty of banditry (article 186, part 2, of the Criminal Code), murder under aggravating circumstances (article 104, part 2) and under article 156, part 2 of the 1961 Criminal Code. He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death with seizure of property (under articles and 156). Pursuant to article 67, part 3, of the Criminal Code, his aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court upheld the death sentence.

2.8 The author states that the death penalty was not the only punishment that could have been imposed on her son under article 104, part 2, of the Criminal Code, as this article also envisages a sentence of between 15 to 20 years' imprisonment. Under article 18, paragraph 5, of the Criminal Code, murder under aggravating circumstances is qualified as a particularly serious crime.

2.9 On an unspecified date, a request for pardon on behalf of Mr. Idiev was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

The complaint

3.1 The author submits that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess his guilt.

3.2 She claims that her son was subjected to arbitrary arrest. Firstly, under article 412 of the Criminal Procedure Code, a suspect can be subjected to detention of short duration only on the basis of an arrest protocol. Those arrested under suspicion of having committed a crime must be detained in the IVS. Mr. Idiev, however, was detained on OCD premises from 14 August 2001 to 23 August 2001, the protocol of his detention of short duration was drawn up and he was placed into IVS only 9 days after he was arrested. During this time, he was forced to incriminate himself. The arrest warrant was served on him only on 26 August 2001. The author submits that her son's remand in custody from 14 August to 26 August 2001 violated article 9, paragraph 1, of the Covenant.

3.3 Under article 83 of the Criminal Procedure Code, the prosecutor may, in exceptional cases, apply a restraint measure, such as arrest, before filing formal charges. The Criminal Procedure Code however does not specify the meaning and scope of 'exceptional cases'. Mr. Idiev's arrest warrant indicated that he was arrested for 'having committed a crime', although he was formally charged only on 3 September 2001. The author submits that the issuance of an arrest warrant without the formal filing of charges is arbitrary. She invokes the Committee's Views in *Mukong v. Cameroon*,²⁷⁶ where the Committee confirmed that "arbitrariness" was not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In the present case, Mr. Idiev was remanded in custody for twenty-two days without being formally charged, contrary to article 9, paragraph 2, of the Covenant.

3.4 The author submits that the issuance of an arrest warrant without formal filing of charges also raises issues under article 14, paragraph 2, of the Covenant.

3.5 The author claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial and conducted the trial in a biased way. It ignored Mr. Idiev's withdrawal of his confessions obtained under duress during the pre-trial investigation and dismissed a motion submitted by his lawyer to examine OCD officers and the investigator in court. This latter fact would also appear to raise issues under article 14, paragraph 3(e), though this provision has not been invoked by the author.

3.6 The author adds that her son's rights under article 14, paragraph 3(d), were violated, because he was granted access to a lawyer only on 3 September 2001. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be legally represented. Under principle No. 7 of the Basic Principles on the Role of

²⁷⁶ Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, Views adopted on 21 July 1994, paragraph 9.8.

Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.²⁷⁷

3.7 Finally, the author claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, since the various breaches of the provisions of article 14 resulted in an illegal and unfair death sentence.

State party's observations on admissibility and merits

4. On 20 May 2004, the State party informed the Committee that Mr. Idiev's death sentence was carried out on an unspecified date, as the Committee's request arrived late and that, on 30 April 2004, the President of Tajikistan had announced the introduction of a moratorium on the application of death penalty. No further details either on the substance of his communication or on the circumstances of the execution of Mr. Idiev were provided by the State party.

Authors' comments on State party's observations

5. On 28 May 2004, the author provided a copy of her son's death certificate, stating that her son had been executed on 24 April 2004, i.e. 11 days after the Committee's request not to carry out his execution was duly addressed to the State party. She refers to another communication against the same State party, which was registered by the Committee with the request not to execute the alleged victim on 23 February 2004 and in which the victim was in fact executed on the same day, as the author's son, i.e. on 24 April 2004. Although the Committee's request was duly addressed to the State party's authorities two months before the actual execution date, the State party justified its failure to respect its obligations under the Optional Protocol by the alleged late arrival of the Committee's request.

Further submissions from the State party

6.1 On 14 April 2006, the State party forwarded to the Committee a report from the General Prosecutor of Tajikistan dated 28 March 2006 and an undated letter of the First Deputy Chairperson of the Supreme Court. In his report, the General Prosecutor states that, as a member of Mr. Sanginov's gang, Mr. Idiev committed a number of serious crimes between January 1997 and July 2001, such as the murder of one Salomov on 25 March 1998, an armed robbery on 23 May 1998, and the murder of a six-year old boy on 12 April 1998. Mr. Idiev's guilt was proven by his confessions made during the pre-trial investigation and in court, witness testimonies, protocols of the reconstruction of the case at the crime scenes, and the conclusion of forensic medical examination. The General Prosecutor pointed out that the allegations of Mr. Idiev's sister that her brother was forced to become a member of Mr. Sanginov's gang; that his arrest by OCD officers was arbitrary; that his testimony was obtained under torture and that he was not promptly assigned a lawyer are uncorroborated. Pre-trial investigation and trial materials indicate that during the pre-trial investigation and in court Mr. Idiev gave his testimony freely, without pressure, and in the presence of his lawyer. The General Prosecutor concludes, therefore, that the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Idiev's guilt and imposing punishment; that his sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.2 The First Deputy Chairperson of the Supreme Court states that Mr. Idiev joined Mr. Sanginov's gang in January 1997 and was an active member until the end of 1998. He pleaded guilty from the first day of his arrest and testified that in 1995 he deserted Russian Border Troops stationed in Tajikistan after the first three months of military service and became a mujahedeen on his own initiative. Since Mr. Idiev admitted his guilt on all counts from the first day of his arrest, there was no need to use coercive methods. It is submitted that on 3 September 2001, Mr. Idiev was formally charged and produced a self-incriminating testimony in his lawyer's presence. On 12 November 2001, he was formally charged with an additional count of murder and he again produced a self-incriminating testimony, again in his lawyer's presence. A request for pardon on behalf of Mr. Idiev was denied by the President of Tajikistan on 21 April 2004. It is thus argued that there are no grounds to quash Mr. Idiev's sentence.

²⁷⁷ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

Issues and proceedings before the Committee

Failure to respect the Committee's request for interim measures

7.1 The author affirms that the State party executed her son 10 days after his communication had been registered under the Optional Protocol and a request for interim measures of protection was duly addressed to the State party²⁷⁸. The Committee notes that the State party does not contest that the execution of the author's son took place on 24 April 2004, i.e. on the date indicated in Mr. Idiev's death certificate provided by the author, but justifies failure to respect its obligations under the Optional Protocol by pleading the alleged "late arrival" of the Committee's request. In this regard, the Committee recalls that on 3 June 2004, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to provide it with detailed information on the time and circumstances of Mr. Idiev's execution and notes that no reply to this request has been received from the State party. In the circumstances, the Committee concludes that the State party has failed to submit sufficient information that would show that the Committee's request not to carry out the execution of Mr. Idiev came too late and its alleged late arrival could not be attributed to the State party.

7.2 The Committee recalls²⁷⁹ that by ratifying the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider communications, and after examination to forward its Views to the State party and to the individual submitting the communication (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the formulation and adoption of its Views.

7.3 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts so as to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her son was denied his rights under several provisions of the Covenant. Having been notified of the communication, the State party breached its obligations under the Optional Protocol by executing the alleged victim before the Committee could conclude its consideration and examination of the case, and the formulation, adoption and transmittal of its Views.

7.4 The Committee recalls²⁸⁰ that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the death penalty undermines the protection of Covenant rights through the Optional Protocol.

Consideration of 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 that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the

²⁷⁸ The initial communication was received on 13 April 2004. The Committee's request for interim measures (included in the Note Verbale informing the State party about the registration of the communication) was transmitted to the State party's authorities, including by fax, on 14 April 2004.

²⁷⁹ See, Communication No. 869/1999, *Piandiong at al. v. the Philippines*, Views adopted on 19 October 2000.

²⁸⁰ See, Communication No 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004.

Optional Protocol. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

8.3 The author claims that her son's tribunal was partial and biased in violation of article 14, paragraph 1 (see paragraph 3.5 above). The Committee notes that these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to the Covenant 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 justice.²⁸¹ In the absence of any further pertinent information on file in this connection, which would show that the author son's trial did suffer from any such defects, the Committee considers that this part of the communication is insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

8.4 The author also claims that the issuance of her son's arrest warrant without formal filing of charges raises issues under article 14, paragraph 2. In the absence of any other pertinent information in this respect, the Committee considers that this part of the communication is inadmissible, as insufficiently substantiated, under article 2 of the Optional Protocol.

8.5 The Committee considers the author's remaining claims under article 6, paragraphs 1 and 2; article 7; article 9, paragraphs 1 and 2; and article 14, paragraphs 3(d), 3(e)²⁸² and 3(g), are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

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 claims that her son was beaten and tortured by OCD officers to make him confess his guilt, contrary to article 7 and article 14, paragraph 3(g), of the Covenant. She argues that her son retracted his confessions in court, asserting that they had been made under torture; though his challenge to the voluntariness of the confessions was dismissed by the court. In the absence of any pertinent explanation on this matter from the State party, except for its remark that the allegations of Mr. Idiev's sister that her brother's testimony was obtained under torture have not been corroborated (paragraph 6.1 above), due weight must be given to the author's allegations. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.²⁸³ In this respect, the Committee recalls the author's detailed description of the treatment to which her son was subjected. It considers that in the circumstances, the State party failed to demonstrate that its authorities duly addressed the torture allegations advanced by the author. Nor has the State party provided copies of any internal investigation materials or medical reports in this respect.

9.3 Furthermore, as regards the claim of a violation of the alleged victim's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession, the Committee must consider the principles that underlie this guarantee. It recalls its jurisprudence that the wording of article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities of the accused with a view to obtaining a confession of guilt.²⁸⁴ The Committee recalls that in cases of alleged forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.²⁸⁵ It is implicit in article 4, paragraph 2, of the Optional

²⁸¹ See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

²⁸² On the article 14, paragraph 3 (e) claim, please see paragraph 3.5 above.

²⁸³ See, e.g., Communication No. 781/1997, *Aliev v. Ukraine*, Views adopted on 7 August 2003, paragraph 7.2.

²⁸⁴ Communication No. 330/1988, *Berry v. Jamaica*, Views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, paragraph 5.1.

²⁸⁵ Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 49.

Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.²⁸⁶ The Committee notes that the State party has not provided any arguments, corroborated by pertinent documentation to refute the author's claim that her son was compelled to confess guilt, although it had the opportunity to do so, and the author has sufficiently substantiated this claim. In the circumstances, the Committee concludes that the facts before it disclose a violation of article 7 and article 14, paragraph 3 (g), of the Covenant.

9.4 The Committee has noted that the author has claimed that on 14 August 2001, her son was arrested arbitrarily, he was detained unlawfully in the premises of the Ministry of Internal Affairs for nine days, without being formally charged (see paragraphs 3.2 and 3.3 above), and during this period of time, he was forced to confess guilt; he was formally charged only on 3 September 2001. The Committee notes that these allegations were not refuted by the State party specifically. In the circumstances, and in the absence of any other pertinent information on file, due weight must be given to the author's allegations. Accordingly, the Committee considers that the facts as presented reveal a violation of the author son's rights under article 9, paragraphs 1 and 2, of the Covenant.

9.5 The Committee has noted the author's claim that her son was not granted access to a lawyer until 3 September 2001, having been detained on 14 August 2001. The Committee notes that although the author's son was facing a number of serious charges which could result in a death sentence, no lawyer was assigned to him before the 3 September 2001. It also notes that the State party has not refuted these allegations specifically but has merely affirmed that on 3 September 2001, as well as in court, Mr. Idiev confessed his full guilt freely, in the presence of a lawyer. The Committee recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused must effectively assisted by a lawyer at all stages of the proceedings. In the absence of any other pertinent information on file, the Committee considers that the facts as presented reveal a violation of the author's rights under article 14, paragraph 3 (d), of the Covenant. In light of this conclusion, the Committee does not find it necessary to examine separately the rest of the author's allegations which might raise other issues under this provision.

9.6 The Committee notes the author's claim that her son's lawyer motioned the court to summon and examine OCD officers and the investigator in court, but the judge summarily denied this motion. The Committee recalls that, as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3(e), which is important for ensuring an effective defence by the accused and their counsel and by guaranteeing the accused the same legal power of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.²⁸⁷ It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or counsel, but only a right to have witnesses examined who are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within such limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess such evidence.²⁸⁸ In the present case, the Committee observes that all the individuals mentioned in the motion submitted by Mr. Idiev's lawyer and rejected by the court, could have provided information relevant to his claim of being forced to confess under torture during the pre-trial investigation. The Committee therefore concludes that the State party's courts did not respect the requirement of equality between the prosecution and the defence in producing evidence and that this amounted to a denial of justice. The Committee therefore concludes, Mr. Idiev's right under article 14, paragraph 3(e), was violated.

9.7 The Committee recalls its jurisprudence to the effect that that the imposition of a death sentence after a trial that did not meet the requirements of a fair trial amounts to a violation of article 6 of the Covenant.²⁸⁹ In the present case, Mr. Idiev's death sentence was passed in violation of the guarantees set out in article 7 and article 14, paragraph 3(g); and article 14, paragraphs 3 (d) and (e), of the Covenant, and thus also in breach of article 6, paragraph 2, of the Covenant.

²⁸⁶ Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3.

²⁸⁷ *Supra* n.186, paragraph 39.

²⁸⁸ *Ibid.*

²⁸⁹ See, *inter alia*, Communication No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, paragraph 6.4.

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 Mr. Idiev's rights under article 7; article 9, paragraphs 1 and 2; article 14, paragraphs 3 (d), (e), and (g); and a violation of article 6, paragraph 2, read together with article 14, paragraph 3 (d), (e) and (g), of the Covenant. The State party also breached its obligations under article 1 of the Optional Protocol.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the ill-treatment of the author's son and a payment of adequate compensation. 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.]

DUNAEV V TAJIKISTAN

United
Nations

CCPR



**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. 1195/2003

<u>Submitted by:</u>	Mr. Vladimir Dunaev (not represented by counsel)
<u>Alleged victim:</u>	Mr. Vyacheslav Dunaev (author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	25 July 2003
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 29 July 2003 (not issued in document form).
<u>Date of adoption of Views:</u>	30 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial.

Substantive issues: Torture; forced confession; unfair trial.

Procedural issue: Level of substantiation of claim.

Articles of the Covenant: 6; 7; 9; 10; 14, paragraphs 1, 2, and 3 (b), (e), and (g)

Article of the Optional Protocol: 2

On 30 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.1195/2003.

[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. 1195/2003**

<u>Submitted by:</u>	Mr. Vladimir Dunaev (not represented by counsel)
<u>Alleged victims:</u>	Mr. Vyacheslav Dunaev (author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	25 July 2003 (initial submission)

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

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1195/2003, submitted to the Human Rights Committee on behalf of Mr. Vyacheslav Dunaev 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 Mr. Vladimir Dunaev, a Russian national born in 1940, currently residing in Tajikistan. He submits the communication on behalf of his son, Vyacheslav Dunaev, also a Russian national born in 1964, who, at the time of the submission of the communication was detained on death row in Tajikistan, following of death sentence imposed by the Sogdiisk Regional Court, on 10 October 2002. The author claims that his son is the victim of a violation, by Tajikistan, of his rights under article 6; article 7; article 9; article 10; and article 14, paragraphs 1, 2, and 3 (b), (c), (e), and (d) of the International Covenant on Civil and Political Rights. The author is unrepresented²⁹⁰.

1.2 When registering the communication on 29 July 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 carry out Mr. Dunaev's death sentence, pending consideration of his case. On 4 December 2003, the State party informed the Committee that Mr. Dunaev's death sentence was commuted by the Supreme Court of Tajikistan, on 7 November 2003, to 25 years' prison term.

The facts as presented by the author

2.1 On 1 August 2002, one Ms. Khairulina was found murdered in her apartment in the city of Bobodzhon (Tajikistan). Her body revealed marks of violence. According to the author, the

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

²⁹⁰ The Optional Protocol entered into force for the State party on 4 April 1999.

murdered woman sold alcoholic drinks in her apartment at night. A medical-forensic expert concluded that the death of Ms. Khairulina occurred as a consequence of "mechanical asphyxia".

2.2 The author's son was arrested, on 4 August 2002, as a suspect in the murder. The author notes that his son had already been convicted twice by that date, including for murder. His son's previous criminal record was allegedly used by the police, in order to accuse him of the above crime.

2.3 The author claims that immediately after his arrest, his son was beaten and was subjected to tortures on premises of the Ministry of Internal Affairs' Department (Bobchon-Gafurovsky District). As a consequence, his son sustained two broken ribs. His son was forced to confess guilt. He was placed in an isolation cell, where he was also beaten, and he was not provided with food or water. His son's repeated requests to be examined by a doctor were ignored. His arrest record was only prepared in the evening of 5 August 2002, and the investigators assigned a lawyer to him on that moment.

2.4 The author claims that his son's case was investigated by one Mr. Aliev, who acted in a superficial and biased manner. The author son's depositions were not reflected correctly in the records prepared by the investigator. The investigator also allegedly made no attempt to verify his son's alibi.

2.5 The author's son was kept for a month and a half in a Temporary Detention Centre of the Bobchon-Gafurovsky District of Internal Affairs. Allegedly, he was constantly beaten there. The author contends in this connection, that throughout the investigation, his son was beaten by police officers and by investigators alike. He was not allowed to meet with anybody, including with his assigned lawyer. As a result, all the evidence in the case file were fabricated. The investigation focused on depositions of one Amonbaev, who was a co-accused in the criminal case. Thus, Amonbaev allegedly gave false depositions, incriminating the author's son. According to the author, his son warned the investigators about this, but his claims were ignored.

2.6 The author adds that his son was unable to meet with his lawyer throughout the preliminary investigation. Following his son's related complaint to the Regional Prosecutor's Office, the investigator and the lawyer then allegedly persuaded his son to sign certain documents without however permitting him to examine the content of his criminal case file. When at some point the family decided to hire another lawyer, the investigator denied him the right to take part in the proceedings. The author allegedly complained about this to the Office of the Prosecutor General and to the Supreme Court, but his letters were referred back to the investigator.

2.7 The author adds that his son had informed him that he was also beaten after his transfer to the Pre-trial Detention Centre in Khudzhand city. Allegedly, he was handcuffed to a radiator there, and beaten, again to force him to confess guilt. The author was only able to meet his son in September 2002²⁹¹. He contends that his son was all black and blue as a result of the beatings suffered when he saw him for the first time after his arrest. His son explained that he was constantly beaten, that he had difficulties in speaking, and he was complaining about a pain on one side. The meeting took place in the presence of eight policemen and the investigator Aliev.

2.8 The author further claims that up to the date of the court trial, his son was kept in isolation, where he was constantly beaten.

2.9 On 10 October 2002, the Sogdiisk Regional Court found the author's son guilty of the murder, and sentenced him to death. The court allegedly examined the case in an accusatory manner. The author son's depositions were ignored. The court also ignored a number of witnesses' depositions. His co-accused, Amonbaev, was sentenced to 23 years' prison term.

²⁹¹ The author contends, without providing dates, that he could see his son only at the start of the court trial.

The author's case was examined, on appeal, by the Supreme Court of Tajikistan (exact date not specified) and the sentence was upheld²⁹².

The complaint

3.1 The author claims that his son is a victim of a violation of his rights under article 7 of the Covenant, given that he was beaten and tortured by police officers and investigators. He claims that in spite of several complaints, made both by his son and his relatives, no inquiry was ever initiated into the torture allegations.

3.2 The author claims, without providing any detail, that his son's rights under article 9, paragraphs 1, 2, and 3, were violated²⁹³.

3.3 The author invokes article 10, paragraph 1, of the Covenant, and claims that the conditions of detention during his son's arrest and throughout the preliminary detention were inhuman and degrading, as his son was kept in isolated and constantly subjected to beatings.

3.4 The author claims a violation of his son's right to be presumed innocent, under article 14, paragraph 2, because neither during the investigation nor in court, his son's involvement in the crimes was established beyond doubt, but the tribunals found him guilty and ignored his depositions, as he had two previous criminal convictions. The author's son was convicted only on the basis of the depositions of Mr. Amonbaev, who had a particular interest in the case.

3.5 According to the author, his son's right under article 14, paragraph 3 (b), was violated during the preliminary investigation. His son was prevented from meeting with his appointed counsel and could not prepare his defence properly. In addition, this lawyer allegedly failed to defend his son's interests. The lawyer in question persuaded his son to retract some of his claims and to sign certain procedural documents. The lawyer was often absent and signed the investigation records *post factum* and *pro forma*.

3.6 The author claims that his son's rights under article 14, paragraph 3 (e), were violated, as during the trial, both the court and the investigation allegedly prevented witnesses from being interrogated. The investigator in charge of the case was present in the court room and called witnesses to the bar, allegedly after giving them instructions on how to testify.

3.7 According to the author, his son is a victim of a violation of his right under article 14, paragraph 3 (g), as he was forced to confess his guilt.

3.8 Finally, the author contends that the above facts reveal also a violation of his son's rights under article 6 of the Covenant, as his death sentence was imposed on him after an unfair trial that did not meet the requirements of article 14.

State party's observations on admissibility and merits

4.1 The State party presented its observations on 4 December 2003. It explains that in accordance with information provided by the Government's Commission on the fulfilment of the State party's international human rights' obligations, Mr. Dunaev was sentenced to death on 10 October 2002 by the Sogdiisk Regional Court. He was found guilty of having murdered one Mrs. Khairulina, on 31 July 2002, in order to rob her, acting on agreement with his co-accused, Mr. Amonboev.

4.2 Mr. Dunaev's guilt in the murder and the robbery was established not only on the basis of his depositions in court, but also on the basis of a multitude of other evidence, such as the

²⁹² The author submits a copy of his appeal addressed to the Supreme Court and to the Office of the Prosecutor General, dated 2 July 2003. In this letter, he affirms that he has been beaten, on the third floor of the Gofurovsky Department of the Ministry of Internal Affairs. He had two broken ribs as a result. The beatings have continued also in his cell, where he was kept individually. His requests to receive a medical assistance were ignored. The author's son further contends in his appeal that during a break, at the trial court, his lawyer explained to him that it would be better to accept the version of his co-accused. The lawyer apparently stressed that in this way, he would receive a prison term and not the death penalty. The lawyer also pointed out that afterwards, on appeal, the author's son would be able to write, complain, and obtain justice. The author's son explains in his appeal that as he believed that the trial was programmed, he listened to the lawyer and confirmed some of the depositions of his co-accused.

²⁹³ This claim was not part of the initial submission but was formulated only on a later stage (see paragraph 5.2 hereafter).

depositions of Mr. Amonboev and other witnesses, records on the seizure of a mask, gloves, a shirt, biological expert's conclusion (No. 19 of 29 August 2002, pursuant to which the seized shirt disclosed samples of human blood from the same blood group as that of the murdered), as well as the conclusions of a forensic/medical examination (No. 65, of 3 September 2002).

4.3 The State party affirms that according to order No. 83 of 9 August 2002, Mr. Dunaev was assigned a lawyer, Mr. Nasrulloev. It contends that the author's allegations that his son was prevented from meeting with the lawyer are totally groundless, as the lawyer in question was present from the moment when it was decided on whether to place Mr. Dunaev in custody; when his client was given the opportunity to consult his indictment act; as well as during the conduct of other investigation acts.

4.4 At the end of the preliminary investigation, Mr. Dunaev and his lawyer were given the opportunity to familiarize themselves with the content of the criminal case file. This is confirmed, *inter alia*, by the fact that, on this occasion, they made a procedural request, and their request was duly complied with.

4.5 In accordance with the conclusions of a medical-forensic expert act No 1443 of 27 August 2002, Mr. Dunaev's body disclosed no corporal injuries²⁹⁴. Therefore, the author's allegations about beatings and torture inflicted on his son are groundless.

4.6 The State party adds that the author appealed the death sentence to the Supreme Court (no specific date provided). On an unspecified date, the Supreme Court confirmed the death sentence. On 7 November 2003, by decision of the Plenum of the Supreme Court of Tajikistan, the death sentence was commuted to 25 years in prison.

Author's comments on the State party's observations

5.1 On 11 March 2004, the author reiterated his initial allegations. He recalled that all evidence in the criminal case were fabricated by the investigators and were based on the false testimony and perjury of Mr. Amonbaev, whose sister, according to the author, was present in the victims' apartment on 31 July 2002. He adds that his son had an alibi – he had spent the whole night in a bar in Kairakkum city and left only at 5 a.m., on 1 August 2002. The totality of the bar's personnel – the owner, her husband, her children and a nephew all could have confirmed that Mr. Dunaev was there that night; but none of them were interrogated during the preliminary investigation. The court interrogated only the owner of the bar.

5.2 He adds, without further details, that his son's rights under article 9, paragraphs 1, 2, and 3, were also violated.

Issues and proceedings before the Committee

Consideration of the admissibility

6.1 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.

6.2 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, and that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee has noted the author's claim under article 9 of the Covenant. It observes that the author made this claim in very general terms, without specifying which particular acts committed by the State party's authorities amounted to a violation of his son's rights under article 9. In the absence of any further information in this relation, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated, pursuant to article 2 of the Optional Protocol.

6.4 The Committee has noted that the author has invoked a violation of his son's rights under article 14, paragraph 2, of the Covenant as the tribunals have failed to establish his son's guilt beyond reasonable doubt (see paragraph 3.4 above). It also notes that the State

²⁹⁴ The State party does not submit a copy of the document in question.

party's has not refuted this allegation specifically, but has contended that Mr. Dunaev's guilt was duly established and his sentence was grounded. In the absence of any further detailed information in this relation on file, that would permit the Committee to verify the author's particular allegations, and, in particular, in the absence of any indication showing that these allegations were ever drawn to the attention of the State party's courts, the Committee considers that this part of the communication is inadmissible, under article 2 of the Optional Protocol, as insufficiently substantiated.

6.5 The Committee noted the author's claims that his son's defence rights, under article 14, paragraph 3 (b), have been violated. The State party has refuted these allegations, by pointing out that Mr. Dunaev has been assigned a lawyer, on 9 August 2002, and this lawyer was present when it was decided to place Mr. Dunaev in custody, and throughout the preliminary investigation. The Committee considers that in the absence of any other pertinent information and documentation on file in this relation that would permit it shed light on this contradictory information, this part of the communication is inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

6.6 The author has also claimed, in general and sometimes contradictory terms that in violation of article 14, paragraph 3 (e), the court refused to, or did not, call a number of witnesses, whose depositions could have been of interest to the solution of case and who could confirm his son's alibi. In the absence of any other pertinent information on file, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

6.7 The Committee notes that the author claims that, in violation of article 7 and 14, paragraph 3 (g), his son was beaten and forced to confess guilt, and that the court ignored this and rejected all claims in this relation. The State party has replied in general terms, by affirming that these allegations are groundless, and that according to the conclusions of a medical-forensic expert of 27 August 2002, Mr. Dunaev's body displayed no injuries. The Committee notes however, that the author has provided a description of the treatment his son was allegedly subjected to; he has claimed, in addition, that his son had two ribs broken as a result. It notes that the author has submitted a copy of his son's appeal to the Supreme Court, where these allegations are invoked directly. In the circumstances, and in the absence of other pertinent information, the Committee considers that due weight must be given to the author's allegations. It also observes that the State party does not dispute the author's contention that the torture allegations were raised at the author son's trial and that the Court did not investigate them. Therefore, it considers that the remaining allegations of the author, in as much as they appear to raise issues under articles 7; 10; and 14, paragraph (g); and article 6, of the Covenant, have been sufficiently substantiated, and declares them admissible.

Consideration on the merits

7.1 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.

7.2 In the present case, the author has claimed that his son was severely beaten, after his arrest, and throughout the preliminary investigation, by police officers and investigators, to the point that he sustained two broken ribs. He claims that as a consequence, his son was forced to confess his guilt, in breach to the requirements of articles 7 and 14, paragraph 3 (g) of the Covenant. The Committee notes that the State party merely replies that these allegations are groundless, and has explained that according to a medical expertise conducted on 27 August 2002, Mr. Dunaev's body disclosed no injuries. The Committee notes, however, that the State party has not provided a copy of the expertise in question nor explains in under what circumstances and in what context the expertise in question was carried out.

7.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially²⁹⁵. It reiterates that, with regard to the burden of proof, it cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information²⁹⁶. In light of the fairly detailed description of the author on the circumstances of his son's ill-

²⁹⁵ See the Committee's General Comment No 20, (10 March 1992).

²⁹⁶ See, for example, Communication No. 161/1983, Emma Rubio de Herrera v. Colombia, Views adopted on 2 November 1987, paragraph 10.5.

treatment; the unavailability of any trial transcript or other court records; and in absence of any further explanations from the State party in this connection, the Committee decides that due weight must be given to the author's allegations. Therefore, the Committee concludes that the facts, as presented in the present case, reveal a violation of the author's son's rights under articles 7 and 14, paragraph 3 (g), of the Covenant. In light of this finding, the Committee considers it unnecessary to examine the author's claim made under article 10 separately.

7.4 The Committee notes that the author has invoked a violation of his son's rights under article 6 of the Covenant, as his son's death sentence was imposed on him after an unfair trial that did not meet the requirements of article 14. The Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the present case, however, Mr. Dunaev's death sentence, passed on 10 October 2002, was commuted, on 7 November 2003, by the Supreme Court of Tajikistan. In the circumstances, the Committee considers it unnecessary to separately examine the author's claim under this provision of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of article 7 and article 14, paragraph 3 (g) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Dunaev with an effective remedy, including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and a retrial, with the guarantees enshrined in the Covenant or release, of the author's son. The State party is also under an obligation to prevent similar violations 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 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.]



**International covenant
on civil and
political rights**

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CCPR/C/95/D/1200/2003

22 April 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Ninety-fifth session

16 March – 3 April 2009

VIEWS

COMMUNICATION No. 1200/2003

<u>Submitted by:</u>	Mrs. Gulrakat Sattorova (not represented by counsel)
<u>Alleged victim:</u>	Mr. Zarif Sattorov (the author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	18 August 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 18 August 2003 (not issued in document form).
<u>Date of adoption of Views:</u>	30 March 2009

ion of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial.

Substantive issue: Torture; forced confession; unfair trial; bias of trial court.

Procedural issues: n.a.

Articles of the Covenant: 6; 7; 9; 10; 14, paragraphs 1 and 3 (g)

Article of the Optional Protocol: n.a.

On 30 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.1200/2003.

[ANNEX]

IX. ANNEX

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

Ninety-fifth session

concerning

COMMUNICATION No. 1200/2003**

Submitted by: Mrs. Gulrakat Sattorova (not represented
by counsel)

Alleged victims: Mr. Zarif Sattorov (the author's son)

State party: Tajikistan

Date of communication: 18 August 2003 (initial submission)

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

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1200/2003, submitted to the Human Rights Committee on behalf of Mr. Zarif Sattorov 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

1.3 The author of the communication is Ms. Gulrakat Sattorova, a Tajik national born in 1950. She submits the communication on behalf of her son, Zarif Sattorov, also a Tajik national born in 1977, who, at the time of the submission of the communication, was detained on death row following imposition of a death sentence by the Supreme Court of Tajikistan, on 21 November 2002. The author claims that her son is the victim of a violation, by Tajikistan, of his rights under article 6; article 7; article 9, paragraphs 1 and 2; article 10; and article 14, paragraphs 1 and 3 (g), of the International Covenant on Civil and Political Rights. The author is unrepresented²⁹⁷.

1.4 When registering the communication on 18 August 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 carry out Mr. Sattorov's death sentence, pending consideration of his case.

The facts as presented by the author:

2.1 The author claims that her son was suspected of having participated, since 1997, in an armed gang of one Saidmukhtor Erov, and having taken part in several crimes, including

** The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

²⁹⁷ The Optional Protocol entered into force for the State party on 4 April 1999.

robberies and murders. She contends that Erov asked young people to join his gang; those who tried to refuse risked being killed. Her son was one of those who were forced to join the gang, in the spring of 1998. According to the author, her son was mentally retarded and had great difficulty in reading or writing. For that reason, he was a gang member for 25 days only.

2.2 The author contends that her son did not participate in any criminal activity. He was accused of having committed robberies in February and May 1997, in June 1997, and to have participated in a hostage taking in May 1998. According to her, he was not involved in these crimes, as he was not a member of the gang when the crimes were committed.

2.3 The author's son was arrested at 5 a.m. on 11 March 2002, when fifteen armed policemen entered the family apartment and forcibly took him to an unknown destination. They showed neither their police ID's nor an arrest warrant. Mr. Sattorov's parents spent two days to locate their son in the Ministry of Internal Affairs' Department of the Zheleznodorozhny District, Dushanbe. Only after a further two days, Mr. Sattorov's father was allowed to see him. Mr. Sattorov was kept at the Internal Affairs' Department for twenty-one days. He was then transferred to a Temporary Detention Centre; from there, he was transferred to a Pre-trial Detention Centre.

2.4 The author contends that her son was detained without any record, to put him under pressure and force him to confess guilt in crimes that he did not commit. During his time in the Zheleznodorozhny District Department of the Ministry of Internal Affairs, i.e. immediately after his arrest, and throughout the preliminary investigation, he was allegedly beaten, tortured, and coerced to confess his guilt in respect of several crimes. In substantiation of her claim, the author explains that her son was beaten with sticks, batons, that he was punched and kicked, was hit with the butt of an automatic rifle, and he was administered electric shocks. His head and his spine were damaged as a result. He was also forced to sign confessions previously drafted by the police, as well as blank forms. The author reiterates that her son could read only with difficulty; thus, he ignored what he was in fact signing. In addition, he signed most of his confessions in the absence of a lawyer. Mr. Sattorov allegedly explained this to relatives during their visits (during the preliminary investigation). He claimed that he often lost conscience because of the torture he had suffered, during the interrogations in the first few days following his arrest. At the time, his body still revealed marks of torture.

2.5 The author adds that her son was formally charged only one month after his arrest. After the arrest, the author's son was not represented by a lawyer and was not informed of his rights. Only one month later, the investigators assigned a lawyer to him, who, according to the author, acted in the best interest of the prosecution. The lawyer did not inform the family of any developments in the criminal case. He also allegedly signed records on several procedural acts that were conducted by the investigators in his absence. He was allegedly aware that his client was subjected to beatings but did not take any steps to prevent this treatment.

2.6 The author adds that numerous procedural acts were carried out not only in the lawyer's absence, but also in the absence of any witnesses, i.e. contrary to the requirements of the Criminal Procedure Code of Tajikistan. The evidence so collected by the investigators should have been considered inadmissible.

2.7 According to the author, during the preliminary investigation, her son was examined by a psychiatrist who concluded that he was of sound mind. The author reiterates that her son was mentally retarded, as he was unable to communicate properly and to expose his thoughts clearly. Therefore, he should have passed a more detailed psychological and psychiatric examination, with hospitalisation in a specialised institution, but the investigators had no interest in ordering such hospitalisation.

2.8 Mr. Sattorov's case was examined by the Criminal College of the Supreme Court of Tajikistan on 21 November 2002. According to the author, the court was biased, as the presiding judge simply endorsed the position of the prosecution. The judge often shouted at

the accused (and at his relatives), contending that he was a liar and that he had told the truth during the preliminary investigation. The requests of the lawyer of the author's son were constantly rejected. For example, the court refused to call several witnesses who, according to the author, could have confirmed her son's non involvement in the crimes he was accused of. The conviction was based exclusively on the forced confessions of the author's son.

2.9 The author adds that in court, no witness could testify to her son's involvement in any crime, or describe in any way his role within the gang of Erova. There were seventy witnesses in the criminal case, but the court called only sixteen. The author claims that the case file contained no direct evidence of her son's guilt.

2.10 The author's son has explained to the court that he was tortured to confess guilt. The court ignored this claim. In addition, the court did not order a medical-forensic examination of her son to verify his torture claims, in spite that his lawyer has asked him to remove his shirt and to show his marks of torture visible at his dorsal spine, and despite that he specifically requested the court to order an examination of his client in this connection.

2.11 On 21 November 2002, the Supreme Court found Mr. Sattorov guilty of all charges and sentenced him to the death. The author's appeal was examined by the appeal instance of the Supreme Court on 28 January 2003, which confirmed the sentence.

The complaint

3.1 The author claims that her son's rights under article 7 of the Covenant were violated, as he was beaten and tortured by investigators. As he was forced to confess his guilt under torture and psychological pressure, his rights under article 14, paragraph 3 (g), were also violated.

3.2 The author claims that her son's rights under article 9, paragraphs 1 and 2, were violated, as he was detained unlawfully, he was not informed of the charges against him for a long period of time and was only charged one month after arrest.

3.3 The author claims that her son's rights under article 14, paragraph 1, were violated, as the court failed in its duty of impartiality, was biased and partial in its assessment of evidence, and in particular because the court did not interrogate a number of witnesses.

3.4 Finally, the author claims that given that her son was sentenced to death after a trial that was contrary to the requirements of article 14, his rights under article 6, paragraphs 1 and 2, of the Covenant, were also violated.

State party's observations

4.1 The State party presented its observations on 4 May 2004. It submits detailed factual information obtained from the Supreme Court and the General Prosecutor's Office of Tajikistan, in connection to several crimes, including armed robberies, beatings, murders, and hostage-takings that were committed between February 1997 and August 1999, by the gang with the participation of Mr. Sattorov.

4.2 The State party contends that Mr. Sattorov was arrested on 12 March 2002, and was placed in pre-trial detention on 13 March 2002. He was assigned a lawyer, Mr. Safarov, on 13 March 2002. The same day, in the presence of his lawyer, the author's son was informed of the charges against him. Mr. Sattorov counter-signed the order placing him in custody. According to the State party, all subsequent investigative acts were conducted in the lawyer's presence.

4.3 The State party contends that there is no information that the alleged victim was subjected to any form of unlawful methods of investigation. Neither during the preliminary investigation nor before the court, did the author's son or his lawyer formulate any claim about beatings, torture, or other form of unlawful methods of investigation.

4.4 At the beginning of the preliminary investigation, Mr. Sattorov admitted his membership in the gang of Erov. He admitted that he participated in the commission of several crimes by the gang. During the verification of his deposition at crime scenes, he reconfirmed his confessions in the presence of his lawyer and other witnesses. In addition, he confessed his guilt in crimes that were not known to the investigation at that time.

4.5 The State party contends that, according to the information from the Supreme Court, the allegations that the author's son was subjected to torture and to prohibited methods of investigation are absolutely groundless and are not corroborated by evidence, and were not confirmed during the trial in the Supreme Court. The case was examined on appeal by the appeal body of the Supreme Court, on 28 January 2003, and Mr. Sattorov's sentence was confirmed. On the basis of the above, there is no evidence of any violations of the Covenant.

Author's comments on the State party's observations

5.1 On 6 June 2004, the author commented on the State party's observations. She reiterates her previous allegations and adds that her son's assigned lawyer met with his client only on 17 March 2002. The same day, the lawyer requested Mr. Sattorov's father to pay him for services. The father paid the amount, but when he was calling him, the lawyer was allegedly

asking for more money, affirming that he would stop representing Mr. Sattorov. According to the author, the lawyer was not present during a number of important investigation acts.

5.2 The author objects to the State party's contention that her son or his lawyer never complained about torture during the preliminary investigation. She explains that her son could not formulate such complaints through his lawyer, as the later was assigned by the investigator, and was only present towards the end of the investigation, in order to sign records and other investigative acts.

5.3 The author reiterates that her son has indeed claimed that he was tortured, and provided details: he was tortured with electric shocks on his nose, his toes. He was handcuffed to a radiator, and beaten with a rubber baton on his spine. He was also beaten on his kidneys with a wet towel. During the court trial, the family hired a new lawyer to represent him. The author reiterates that her son claimed in court that he was tortured. She adds that the new lawyer asked the court to call the officers who conducted the investigation and allegedly tortured his client, as the accused could have recognised them, but the court rejected the request. She recalls that during the court trial, in the presence of other lawyers and co-accused, the new lawyer requested the accused to raise his shirt and to show to the judges the marks of torture on his dorsal spine. The lawyer asked the court to order a medical-forensic examination, without success.

5.4 The author provides a copy of the appeal filed by her son's lawyer after his conviction. The lawyer also filed two applications for a supervisory review to the Supreme Court Chairman and to the Supreme Court's Presidium, but his claims were rejected.

5.5 The author adds, on 21 October 2004, that her son was still at Investigation Detention Centre No.1 in Dushanbe, notwithstanding the fact that there had been a Moratorium on the execution of death sentences in Tajikistan in the meantime, and that many of those sentenced to death were transferred to other detention facilities.

Additional information from the State party

6. On 9 March 2006, the State party informed that on 15 July 2004, Mr. Sattorov's death sentence was commuted, by decision of the Supreme Court, to 25 years' prison term.

Issues and proceedings before the Committee

Consideration of the admissibility

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

7.2 The Committee 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, and that it is uncontested that domestic remedies have been exhausted.

7.3 The Committee notes the author's claims under article 9, according to which her son was kept unlawfully for four weeks on premises of the Ministry of Internal Affairs and that he was charged formally only later. The State party has refuted these allegations and has provided the exact sequence of the author son's arrest and placement in custody (see paragraph 4.2 above). In the absence of any further information, in particular on the eventual steps taken by the alleged victim, his representatives, or his family, to bring these issues to the attention of the competent authorities during the investigation and the trial, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated, under article 2 of the Optional Protocol.

7.4 The Committee notes that the author claims that her son was tortured and forced to confess his guilt, and that the court ignored this and refused the claims to call and interrogate the investigators in his case and to order his medical examination. The State party has rejected these claims, by affirming in general terms that no torture was used against the author's son, but without providing further explanations on the matter. In the circumstances, and given that the copy of Mr. Sattorov's appeal contains direct references to alleged forced confessions and torture, the Committee considers that due weight must be given to the author's allegations. Therefore, it considers that the remaining allegations of the author, in as much as they appear to raise issues under articles 6; 7; 10; and 14, paragraphs 1 and 3 (g), of the Covenant, have been sufficiently substantiated, and therefore declares them admissible.

Consideration of the merits

8.1 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.

8.2 The author has claimed that her son was beaten and tortured by investigators and was thus forced to confess guilt in a number of crimes. She provides a detailed description of the methods of torture used. She contends that in court, her son retracted his confessions made during the preliminary investigation and explained that they had been obtained under torture, but his claims were ignored. He showed marks of alleged torture to the court. His lawyer also asked, without success, to have him examined by a forensic expert to confirm these claims. The author contends that her son's and his lawyer's claims and requests in this respect were simply ignored, and that his initial confessions served as the basis for his conviction.

8.3 The author has provided copies of her son's sentence and his appeal. The Committee notes that the sentence refers to the fact that the author's son retracted his confessions in court, as obtained under coercion. This issue remained however unanswered by the court. The Committee further notes that in his appeal to the appeal instance of the Supreme Court, the author's son's lawyer referred to the fact that his client's confessions were obtained through torture and that in court, Mr. Sattorov had also confirmed this. The lawyer also claimed in the appeal that his request for a medical examination of his client was also ignored by the trial court. The Committee notes that the State party has simply replied, without providing further

explanations, that the author's son was not tortured, and that, in addition, neither he nor his lawyer ever complained about torture or ill-treatment.

8.4 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 impartially²⁹⁸. 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 considers that the facts as presented by the author disclose a violation of her son's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

8.5 In light of the above finding, the Committee does not find it necessary to address separately the author's claim under article 10 of the Covenant.

8.6 The author also claims that the trial of her son did not meet the basic requirements for a fair trial, in violation of 14, paragraph 1, because of the manner her son was treated when he retracted his confessions during the trial, and because of the court's failure to adequately address his torture allegations, and because the court did not call a number of witnesses. The Committee has noted that State party did not specifically address these issues in its submission. At the same time, the Committee notes however that the case file does not contain any pertinent information in this respect, in particular trial transcripts or other records, which would allow it to shed light on the allegation and allow it to ascertain whether Mr. Sattorov's trial indeed suffered from such fundamental defects. In these particular circumstances, the Committee considers that it cannot conclude to a violation of the alleged victim's rights under article 14, paragraph 1.

8.7 Finally, with respect to the author's claim under article 6, the Committee notes that in the present case, the alleged victim's death sentence was commuted to long term imprisonment on 15 July 2004. The Committee considers that in these circumstances, the issue of the violation of Mr. Sattorov's right to life has thus become moot.

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

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Sattorov with an effective remedy, including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and a retrial, with the guarantees enshrined in the Covenant or release, of the author's son. The State party is also under an obligation to prevent similar violations in the future.

11. 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.

²⁹⁸ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

[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.]

KHUSEYNOVA V TAJIKISTAN

**UNITED
NATIONS**



**International covenant
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30 October 2008

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13 – 31 October 2008

VIEWS

Communications Nos. 1263/2004 and 1264/2004

<u>Submitted by:</u>	Mrs. Saybibi Khuseynova (1263/2004) and Mrs. Pardakhon Butaeva (1264/2004) (not represented by counsel)
<u>Alleged victims:</u>	Messrs. Ibromkhim Khuseynov (Saybibi Khuseynova's son) and Todzhiddin Butaev (Pardakhon Butaeva's son)
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	5 March 2004 (Khuseynova) and 10 March 2004 (Butaeva) (initial submissions)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decisions, transmitted to the State party on 9 March 2004 (1263/2004) and 11 March 2004 (1264/2004) (not issued in document form)
<u>Date of adoption of Views:</u>	20 October 2008

GE.08-44861

* Made public by the decision of the Human Rights Committee.

Subject matter: Imposition of death penalty on complainants after arbitrary detention and use of coerced evidence.

Substantive issues: Right to life; torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; fair hearing; impartial tribunal; right to be presumed innocent; right to adequate time and facilities for preparation of defence; right not to be compelled to testify against oneself or to confess guilt.

Procedural issues: Non-substantiation of claims, non-exhaustion of domestic remedies.

Articles of the Covenant: 6, read together with 14; 7; 9, paragraph 1; 14, paragraphs 1, 3(b),(e) & (g)

Article of the Optional Protocol: 2

The Working Group of the Human Rights Committee recommends that the Committee consider for adoption the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communications Nos. 1263/2004 and 1264/2004. The text of the Views is appended to the present document.

[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-fourth session

concerning

Communications Nos. 1263/2004 and 1264/2004*

<u>Submitted by:</u>	Mrs. Saybibí Khuseynova (1263/2004) and Mrs. Pardakhon Butaeva (1264/2004) (not represented by counsel)
<u>Alleged victims:</u>	Messrs. Ibrokhim Khuseynov (Saybibí Khuseynova's son) and Todzhiddin Butaev (Pardakhon Butaeva's son)
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	5 March 2004 (Khuseynova) and 10 March 2004 (Butaeva) (initial submissions)

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

Meeting on 20 October 2008,

Having concluded its consideration of communications Nos. 1263/2004 and 1264/2004, submitted to the Human Rights Committee on behalf of Messrs. Ibrokhim Khuseynov and Todzhiddin Butaev under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The first author is Mrs. Saybibí Khuseynova, a Tajik national born in 1952, who submits the communication on behalf of her son, Mr. Ibrokhim Khuseynov, an Uzbek²⁹⁹ national born in 1972. The second author is Mrs. Pardakhon Butaeva, a Tajik national born in 1939, who submits the communication on behalf of her son, Mr. Todzhiddin Butaev, a Tajik national born in 1977. At the time of submission of the communications, both victims were detained on death row in Dushanbe, awaiting execution after a death sentence imposed by the Judicial Chamber for Criminal Cases of the Supreme Court on 24 February 2003. The authors claim violations by Tajikistan of the alleged victims' rights under article 6, read together with article 14; article 7; article 9, paragraph 1; article 14, paragraphs 1, 3(b) and 3(g), of the International Covenant on Civil and Political Rights. Mrs. Butaeva also claims a violation of article 14, paragraph 3(e),

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

²⁹⁹ Initial submission refers to 'nationality' (*национальность*), which could be translated from Russian into English both as 'ethnic origin' and 'citizenship'.

in her son's case. The authors are unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on 9 March 2004 (Khuseynov) and on 11 March 2004 (Butaev), not to carry out the execution of the authors' sons, so as to enable the Committee to examine their complaints. This request was reiterated by the Committee on 26 April 2004. By note of 20 May 2004, the State party informed the Committee that it acceded to the request for interim measures and that, on 30 April 2004, the President of Tajikistan announced the introduction of a moratorium on the application of death penalty. On 11 June 2004, the Committee lifted its request for interim measures.

The facts as presented by the authors

2.1 Towards the end of 1997,³⁰⁰ one Rakhmon Sanginov, created a criminal gang, which began to commit robberies, murders and to take hostages. By force and using death threats, he coerced young men from the district where his gang was operating to join the gang and to commit crimes. Among many others, Messrs Khuseynov and Butaev were thus forced to become members of Mr. Sanginov's gang.

The Case of Mr. Ibrokhim Khuseynov

2.2 On 26 June 2001, Mr. Khuseynov was apprehended by officers of the Criminal Investigation Department (CID) of the Department of Internal Affairs of the Somoni District of Dushanbe (DIA). For two days, he was detained in DIA premises and subjected to beatings with truncheons and electric shocks to various body parts. He was forced to testify against himself and to confess to having committed a number of crimes, including murders and robberies.

2.3 On 28 June 2001, Mr. Khuseynov was interrogated by the Deputy Head of the DIA's Investigation Section. The same day, he was interrogated as a suspect by an officer of the Ministry of Internal Affairs. On the same day, a protocol of Mr. Khuseynov's arrest of short duration was drawn up, and he was placed into temporary confinement (IVS). He did not have access to a lawyer, and his rights were not explained to him.³⁰¹

2.4 Twenty-two days after being placed into IVS custody, Mr. Khuseynov was scheduled to be transferred to the investigation detention centre (SIZO). The SIZO officers, however, refused to accept him because of numerous bruises and injuries visible on his body. Finally, he was transferred to the SIZO on 30 July 2001, after his health condition had been attested by a medical certificate.³⁰² Mrs. Khuseynova claims that under IVS regulations, a detained person is to be transferred from the IVS to the SIZO as soon as an arrest warrant is served on him. In exceptional cases and with the prosecutor's approval, a detained person can be kept in the IVS up to ten days. Mr. Khuseynov was detained at the IVS for a total of thirty two days (from 28 June 2001 to 30 July 2001).

2.5 His arrest warrant was issued on 30 June 2001 by the Deputy General Prosecutor of Tajikistan. It referred to the organisation of an illegal armed group (article 185, part 2, of the Criminal Code) and murder with aggravating circumstances (article 104, part 2).

2.6 On 8 July 2001, Mr. Khuseynov was formally charged with banditry (article 186, part 2, of the Criminal Code) and murder with aggravating circumstances (article 104, part 2). During the subsequent interrogation as an accused, he was unrepresented. When the interrogation ended, an investigator invited in a lawyer, one Tabarov, who signed the interrogation protocol, although Mr. Khuseynov had never seen this lawyer before and was unaware that he had been assigned to him. There was no document issued in Mr. Tabarov's name in the criminal case file and this lawyer participated in no more than two investigative actions after Mr. Khuseynov was charged.

³⁰⁰ According to the court documents, the date should be 1994.

³⁰¹ Reference is made to article 19 of the Tajik Constitution: "Every person is entitled to legal assistance from the moment of his arrest" and article 53 of the Criminal Procedure Code: "Every suspect has the right to defence".

³⁰² No further details provided.

2.7 According to Mrs. Khuseynova, the investigators had planned the verification of her son's confession at the crime scene in advance. Some days before the actual verification, her son was brought to the crime scene, and it was explained to him where he should stand and what to say. The actual verification was video-taped, and was twice carried out in the absence of a lawyer.

2.8 On 28 August 2001, Mr. Khuseynov was granted access to a lawyer of his choice, one Ibrokhimov, who was retained by the family. Mr. Ibrokhimov, however, was not informed about any of the investigative actions carried out in relation to his client; he could not meet Mr. Khuseynov and prepare his defence.

2.9 The trial of Mr. Khuseynov by the Judicial Chamber for Criminal Cases of the Supreme Court took place from 3 May 2002 to 24 February 2003. Mrs. Khuseynova claims that her son's trial was unfair and that the court was partial. Thus:

a) Mr. Khuseynov retracted his confessions obtained under duress during the pre-trial investigation in court. He affirmed that the law enforcement officers used unlawful methods during the interrogations and forced him to testify against himself. Mr. Khuseynov's testimony was allegedly ignored by the presiding judge and omitted from the trial transcript. Subsequently, Mr. Khuseynov and his lawyer submitted to the judge a transcript of Mr. Khuseynov's testimony not included in the trial transcript. The court took note of these omissions but did not take them into account when passing the death sentence.

b) Mr. Khuseynov was sentenced to death exclusively on the basis of his own confessions obtained by unlawful methods during the pre-trial investigation.

2.10 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Khuseynov guilty of banditry (article 186, part 2, of the Criminal Code), murder with aggravating circumstances (article 104, part 2) and robbery (article 249, part 4). He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death (under articles 104 and 249). Pursuant to article 67, part 3, of the Criminal Code, Mr. Khuseynov's aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court reduced the sentence pursuant to article 249 of the Criminal Code to 20 years' imprisonment, with seizure of property, and upheld the remaining sentence.

2.11 On 24 May 2004, the first author indicated that the death penalty was not the only punishment that could have been imposed under article 104, part 2, of the Criminal Code, as the latter also envisages a sentence of between 15 to 20 years' imprisonment. Under article 18, paragraph 5, of the Criminal Code, murder with aggravating circumstances is qualified as a particularly serious crime. The lawfulness of Mr. Khuseynov's detention was determined by the prosecutor who issued his arrest warrant.

2.12 On an unspecified date, a request for pardon on behalf of Mr. Khuseynov was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

Case of Mr. Todzhiddin Butaev

2.13 From May to September 1997, Mr. Butaev performed his military service in a military unit under the command of one 'Khochi-Ali', subordinated to Mr. Sanginov (see paragraph 2.1 above). When Mr. Butaev learned that this military unit operated outside the law, he left the unit. In February 1998, the commander of another illegal squadron also subordinated to Mr. Sanginov, forced Mr. Butaev to become a member of his organisation, which was implicated in murders and robberies. In September 1998, Mr. Butaev deserted.

2.14 At around 5 a.m. on 4 June 2001, Mr. Butaev was apprehended by law-enforcement officers at his home and taken away. His mother was not given any explanation and was not informed about her son's whereabouts. On 10 June 2001, she visited the Ministry of Security, where she was told that her son was detained on the Ministry of Security premises and was suspected of having committed particularly serious crimes. While detained in the Ministry of Security, Mr. Butaev was interrogated daily, subjected to beatings with truncheons, application of electric shocks and forced to testify against himself.

2.15 On 14 July 2001, legal proceedings were instituted against him. The same day, he was interrogated as a suspect by an investigator of the Ministry of Security, in the absence of a lawyer. On the same day, a protocol of Mr. Butaev's arrest of short duration was drawn up, and he was placed into the IVS. He did not have access to a lawyer, and his rights were not explained to him.³⁰³ On an unspecified date, Mr. Butaev was transferred to SIZO, where he contracted tuberculosis.

2.16 Mr. Butaev's arrest warrant was issued by a prosecutor on 19 July 2001. On 22 July 2001, he was assigned a lawyer and formally charged.³⁰⁴ The ensuing investigative actions, however, were done in the absence of a lawyer: verification of Mr. Butaev's testimony at the crime scene; and conduct of a confrontation with the victims' relatives.

2.17 The trial of Mr. Butaev before the Judicial Chamber for Criminal Cases of the Supreme Court, together with that of Mr. Khuseynov as co-accused, ended on 24 February 2003. Mrs. Butaeva claims that her son's trial was unfair and that the court was partial. Thus:

a) No prosecution witnesses identified Mr. Butaev in court as the person who murdered their relatives.

b) In court, Mr. Butaev retracted his confessions obtained under duress during the pre-trial investigation. He affirmed that the law enforcement officers used unlawful methods during interrogations and forced him to incriminate himself. Mr. Butaev pleaded his innocence, stated that he was not present at the crime scene when the crime was committed, and that that he wrote down his confession according to the investigator's instructions. Mr. Butaev's lawyer drew the court's attention to the fact that his client's confession contradicted the results of a forensic medical examination. Specifically, during the pre-trial investigation, Mr. Butaev admitted to having shot one Alimov, whereas the forensic medical examination of 13 February 1998 established that the cause of the victim's death was 'mechanical asphyxia'. The court disregarded these contradictions when passing its death sentence.

c) The court dismissed a motion submitted by Mr. Butaev's lawyer to summon and examine in court the investigator, officers of the Ministry of Security who apprehended Mr. Butaev, as well as the forensic expert who made the examination of 13 February 1998.

2.18 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Butaev guilty of banditry (article 186, part 2, of the Criminal Code), murder with aggravating circumstances (article 104, part 2) and robbery (article 249, part 4). He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death (under articles 104 and 249). Pursuant to article 67, part 3, of the Criminal Code, Mr. Butaev aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court reduced Mr. Butaev's pursuant to article 249 of the Criminal Code to 20 years' imprisonment, with seizure of property, and upheld the remaining sentence.

2.19 On an unspecified date, a request for pardon on behalf of Mr. Butaev was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

The complaint

Case of Mr. Ibrokhim Khuseynov

3.1 Mrs. Khuseynova claims that her son was subjected to arbitrary arrest. Firstly, under article 412 of the Criminal Procedure Code, a suspect can be subjected to arrest of short duration only on the basis of an arrest protocol. Those apprehended under suspicion of having committed a crime must be detained in the IVS. Mr. Khuseynov, however, was detained on the DIA premises from 26 June 2001 to 28 June 2001, the protocol of his arrest of short duration was drawn up and he was placed into the IVS only 48 hours after he was apprehended.

³⁰³ Reference is made to article 19 of the Tajik Constitution: "Every person is entitled to legal assistance from the moment of his arrest" and article 53 of the Criminal Procedure Code: "Every suspect has the right to defence".

³⁰⁴ No further details provided.

During this time, he was forced to incriminate himself. The arrest warrant was served on him only on 30 June 2001. Mrs. Khuseynova submits that her son's remand in custody from 26 June to 30 June 2001 violated article 9, paragraph 1, of the Covenant.

3.2 Secondly, under article 83 of the Criminal Procedure Code, the prosecutor may, in exceptional cases, apply a restraint measure, such as arrest, before filing formal charges. The Criminal Procedure Code does not specify, however, what should be deemed to be 'exceptional cases'. Mr. Khuseynov's arrest warrant indicates that he was arrested for 'having committed a crime', although he was formally charged only on 8 July 2001. The first author submits that the issuance of an arrest warrant without the formal filing of charges and without justifying the exceptional nature of the arrest, as required by article 83 of the Criminal Procedure Code, is arbitrary. She invokes the Committee's Views in *Mukong v. Cameroon*,³⁰⁵ where the Committee confirmed that "arbitrariness" was not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In the present case, Mr. Khuseynov was remanded in custody for fifteen days without being formally charged.

3.3 Mrs. Khuseynova submits that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess guilt.

3.4 Mrs. Khuseynova claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial. She adds that her son's rights under article 14, paragraph 3(b), were violated, because he was interrogated as a suspect, on 28 June 2001, in the absence of a lawyer, and because he was granted access to a lawyer only on 8 July 2001. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be represented by a lawyer. Under principle No. 7 of the Basic Principles on the Role of Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.³⁰⁶

3.5 Finally, Mrs. Khuseynova claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, because the violations of article 14 resulted in an illegal and unfair death sentence, which was pronounced by an incompetent tribunal.

Case of Mr. Todzhiddin Butaev

3.6 Mrs. Butaeva claims that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess guilt. During Mr. Butaev's detention in the Ministry of Security (from 4 June to 14 July 2001) and until he was formally charged on 22 July 2001, he was held incommunicado and in isolation from the outside world for 48 days (4 June to 22 July 2001). Mrs. Butaeva refers to the Committee's general comment 20 (44), which recommends that States parties should make provision against incommunicado detention and notes that total isolation of a detained or imprisoned person may amount to acts prohibited by article 7.³⁰⁷

3.7 Mrs. Butaeva submits that her son was subjected to arbitrary arrest. He was detained the Ministry of Security from 4 June to 14 July 2001, the protocol of his arrest of short duration was drawn up and he was placed in IVS custody only forty days after he had been apprehended. During this time, he was forced to testify against himself.

3.8 Mrs. Butaeva claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial and conducted the trial in an accusatory manner. Article 14, paragraph 3(e), was violated as the court rejected a motion by Mr. Butaev's lawyer to summon and examine witnesses against his client, as well as the forensic expert who made the examination of 13 February 1998.

3.9 Mrs. Butaeva claims that her son's rights under article 14, paragraph 3(b), were violated, because he was interrogated as a suspect, on 14 June 2001, in the absence of a lawyer, and

³⁰⁵ Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, Views adopted on 21 July 1994, paragraph 9.8.

³⁰⁶ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

³⁰⁷ See, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A, general comment 20 (44).

because he was granted access to a lawyer only on 19 July 2001.³⁰⁸ Each time when Mr. Butaev requested a lawyer, he was beaten by officers of the Ministry of Security. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be represented by a lawyer. Under principle No. 7 of the Basic Principles on the Role of Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.³⁰⁹

3.10 Finally, Mrs. Butaeva claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, because the violations of article 14 resulted in an illegal and unfair death sentence, which was pronounced by an incompetent tribunal.

State party's observations on admissibility and merits

4. On 27 July 2004, the State party forwarded information that on 20 July 2004, the President of Tajikistan granted presidential pardons to both Messrs. Khuseynov and Butaev and commuted their death sentences to long term imprisonment. No further details were provided by the State party.

Authors' comments on State party's observations

5.1 On 13 December 2004, Mrs. Butaeva submitted that in August 2004, she could not deliver a parcel to her son, whom she believed was then still detained on death row. She was told that her son's death sentence had been commuted and that he had been transferred to a detention facility in Kurgan-Tyube. She claims that she was not officially informed by the State party about the commutation of her son's death sentence. On 16 December 2004, Mrs. Khuseynova submitted that she only learnt about the commutation of her son's death sentence from the Committee's letter she received in October 2004.

5.2 Both authors submit that the commutation of their sons' death sentences does not mean that the State party provided adequate redress for the violation of Messrs. Khuseynov's and Butaev's rights. They insist, therefore, on the continuation of the consideration of their communications before the Committee.

Further submissions from the State party

Case of Mr. Ibrokhim Khuseynov

6.1 On 14 April 2006, the State party forwarded a report from the General Prosecutor of Tajikistan dated 28 March 2006 and a letter of First Deputy Chair of the Supreme Court, dated 31 March 2006. In his report, the General Prosecutor recalls the crimes Mr. Khuseynov was found guilty of,³¹⁰ and finds that by imposing the punishment, the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Khuseynov's guilt. He concluded that Mr. Khuseynov's sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.2 The First Deputy Chair of the Supreme Court reiterates that Mr. Khuseynov's guilt was proven by his own confession made during both the pre-trial investigation and in court, witness testimonies, the protocols of the verification of testimonies at the crime scene, the conclusion of forensic and ballistic examinations, and other evidence. During the pre-trial investigation and in the presence of a lawyer, Mr. Khuseynov described how he murdered two of the victims and pleaded guilty. Moreover, he committed a number of armed robberies in an armed gang of Mr. Sanginov. He thus concluded that Mr. Khuseynov's sentence was lawful and proportionate.

Case of Mr. Todzhiddin Butaev

6.3 In a report also dated 14 April 2006, the General Prosecutor recalls the crimes Mr. Butaev was found guilty of,³¹¹ and finds that by imposing the punishment, the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Butaev's guilt. He specified that Mrs. Butaeva's allegations that her son's testimony was

³⁰⁸ In paragraph 2.16 above, Mrs. Butaeva claims that her son was assigned a lawyer on 22 July 2001.

³⁰⁹ *Supra* n.277.

³¹⁰ The crimes were allegedly committed between 7 August 1994 and 27 June 1999.

³¹¹ The crimes were allegedly committed between early February 1998 and 18 October 1998.

obtained under torture, that his arrest was not followed by a timely protocol and that he was not promptly assigned a lawyer have not been corroborated. Pre-trial investigation and trial materials indicate that during the pre-trial investigation and in court Mr. Butaev gave his testimony freely, without pressure, and in the presence of his lawyer. The General Prosecutor concludes, therefore, that Mr. Butaev's sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.4 The First Deputy Chairperson of the Supreme Court also by a letter of 31 March 2006, reiterates that Mr. Butaev's guilt was proven by his own confession made during both the pre-trial investigation and in court, the protocols of the verification of testimonies at the crime scene, and the conclusion of forensic examinations. He thus concludes that Mr. Butaev's sentence was lawful and proportionate.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party has not contested that domestic remedies have been exhausted in both communications.

7.3 The authors claim that the alleged victims' rights under article 9, paragraphs 1 and 2, were violated, as they were unlawfully arrested and detained for long periods of time without being formally charged. The Committee notes, however, that the material before it does not allow it to establish the exact circumstances of their arrest. It further remains unclear whether these allegations were raised at any time before the domestic courts. In these circumstances, the Committee considers that this part of the communications is not properly substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7.4 The authors claim that in violation of article 14, paragraph 1, their sons' tribunal was partial and biased (paragraphs 2.9, 2.17, 3.4 and 3.8 above). The Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to the Covenant 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 justice.³¹² In the present cases, the Committee considers that the authors have not been able sufficiently to show that the trial suffered from such defects. Accordingly, the Committee concludes that the authors have failed sufficiently to substantiate their claims under this provision, and that this part of the communications is accordingly inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers the authors' remaining claims under article 6, read together with article 14; article 7; article 14, paragraphs 3(b) and 3(g), in relation to Messrs. Khuseynov and Butaev; and Mrs. Butaeva's allegation under article 14, paragraph 3 (e), in relation to her son, are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the communications 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.

8.2 The authors claim that their sons were beaten and tortured by DIA officers (case of Mr. Khuseynov) and officers of the Ministry of Security (case of Mr. Butaev) to make them confess their guilt, contrary to article 7 and article 14, paragraph 3(g), of the Covenant. They argue that their sons revoked their confessions in court, asserting that they had been extracted

³¹² See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

under torture; their challenge to the voluntariness of the confessions was dismissed by the court. In the absence of any pertinent explanation on this matter from the State party, due weight must be given to the authors' allegations. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.³¹³ In this respect, the Committee recalls the authors' fairly detailed description of the treatment to which their sons were subjected. It considers that in these circumstances, the State party failed to demonstrate that its authorities adequately addressed the torture allegations advanced by the authors, nor has it provided copies of any internal investigation materials or medical reports in this respect.

8.3 Furthermore, as regards the claim of a violation of the alleged victims' rights under article 14, paragraph 3 (g), in that they were forced to sign a confession, the Committee must consider the principles that underlie this guarantee. It recalls its jurisprudence that the wording, in article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities of the accused with a view to obtaining a confession of guilt.³¹⁴ The Committee recalls that in cases of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.³¹⁵ It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.³¹⁶ The Committee takes into account that the State party did not provide any arguments corroborated by relevant documentation to refute the authors' claim that their sons were compelled to confess guilt, although the State party had the opportunity to do so, and which the authors have sufficiently substantiated. In these circumstances, the Committee concludes that the facts before it disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

8.4 On the alleged violation of article 14, paragraph 3 (b), in that the authors' sons were not informed of their right to be represented by a lawyer upon arrest, that they were assigned a lawyer only 12 days (Mr. Khuseynov) and 48 days (Mr. Butaev), respectively, after being detained and that most of the investigative actions, particularly during the time when they were subjected to beatings and torture, the Committee again regrets the absence of any relevant explanation by the State party. It recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused must effectively be assisted by a lawyer at all stages of the proceedings.³¹⁷ In the present cases, the authors' sons were subject to several charges that carried the death penalty, without any effective legal defence, although a lawyer had been assigned to them by the investigator and, at a later stage, retained by the family (case of Mr. Khuseynov). It remains unclear from the material before the Committee whether Mr. Butaev ever requested a private lawyer, or whether Messrs. Khuseynov and Butaev ever contested the choice of the publicly assigned lawyer; however, and in the absence of any relevant explanation by the State party on this particular issue, the Committee reiterates that steps must be taken to ensure that counsel, once assigned, provides effective representation, in the interests of justice.³¹⁸ Accordingly, the Committee is of the view that the facts before it reveal a violation of Messrs. Khuseynov's and Butaev's rights under article 14, paragraph 3 (b), of the Covenant.

8.5 The Committee has noted Mrs. Butaeva's claim that her son's lawyer motioned the court to summon and examine in court witnesses against his client, as well as the forensic expert who made an examination of 13 February 1998, and that the judge denied his motion without providing reasons. The Committee recalls that, as an application of the principle of equality of

³¹³ See, e.g., Communication No. 781/1997, *Aliiev v. Ukraine*, views adopted on 7 August 2003, paragraph 7.2.

³¹⁴ Communication No. 330/1988, *Berry v. Jamaica*, views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, views adopted on 1 November 2004, paragraph 5.1.

³¹⁵ Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 49.

³¹⁶ Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3.

³¹⁷ See, e.g., *Aliiev v. Ukraine*, supra n.283; Communication No. 223/1987, *Robinson v. Jamaica*, Views adopted on 30 March 1989; Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 23 March 1999.

³¹⁸ See, *inter alia*, Communication No. 253/1987, *Kelly v. Jamaica*, views adopted on 8 April 1991, paragraph 5.10.

arms, the guarantee of article 14, paragraph 3(e), 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.³¹⁹ It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within such limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess such evidence.³²⁰ In the present case, the Committee observes that most of the witnesses and the forensic expert requested in the motion submitted by Mr. Butaev's lawyer, which was denied by the court, could have provided information relevant to Mr. Butaev's claim of being forced to confess under torture at the pre-trial investigation. This factor leads the Committee to the conclusion that the State party's courts did not respect the requirement of equality between prosecution and defence in producing evidence and that this amounted to a denial of justice. Consequently, the Committee concludes that Mr. Butaev's right under article 14, paragraph 3(e), was violated.

8.6 The Committee recalls its jurisprudence to the effect that 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 Covenant.³²¹ In the present case, however, the alleged victims' death sentences imposed on 24 February 2003 were commuted to long term imprisonment on 20 July 2004. The Committee considers that in these circumstances, the issue of the violation of Messrs. Khuseynov and Butaev's right to life has thus become moot.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the rights of Messrs. Khuseynov and Butaev under article 7, read together with article 14, paragraph 3(g); and article 14, paragraph 3 (b); and a violation of the right of Mr. Butaev under article 14, paragraph 3 (e), of the Covenant.

10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Messrs. Ibromkhim Khuseynov and Todzhiddin Butaev with an effective remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

11. 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.]

³¹⁹ Supra n.186, paragraph 39.

³²⁰ *Ibid.*

³²¹ See, *inter alia*, Communication No. 907/2000, *Siragev v. Uzbekistan*, views adopted on 1 November 2005, paragraph 6.4.



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

VIEWS

Communications Nos. 1209, 1231/2003 and 1241/2004

<u>Submitted by:</u>	Mrs. Bakhrinisso Sharifova (1209/2003), Mr. Saidali Safarov (1231/2003), Mr. Kholmurod Burkhonov (1241/2004) (not represented by counsel)
<u>Alleged victims:</u>	Messrs. Ekubdzhon Rakhmatov (Bakhrinisso Sharifova's son), Alisher and Bobonyoz Safarov and Farkhod Salimov (Saidali Safarov's sons and nephew, respectively), Shakhobiddin Mukhammadiev (Kholmurod Burkhonov's son)
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	30 April 2003 (initial submissions)
<u>Document references:</u>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 28 October 2003 (1209/2003), 2 December 2003 (1231/2003) and 20 January 2004 (1241/2004), not issued in document form
<u>Date of adoption of Views:</u>	1 April 2008

GE.08-41480

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary detention and subsequent unfair trial.

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to humane treatment and respect for dignity; fair hearing; impartial tribunal; right to adequate time and facilities for the preparation of the defence; right to examine witnesses; separation of accused juveniles from adults.

Procedural issues: Non-substantiation of claims, non-exhaustion of domestic remedies.

Articles of the Covenant: 7; 9, paragraphs 1 and 2; 10; 14, paragraphs 1, 3(b),(d),(e), and(g)

Article of the Optional Protocol: 2

On 1 April 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communications Nos. 1209/2003, 1231/2003 and 1241/2004.

[ANNEX]

ANNEX

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

Ninety-second session

concerning

Communications Nos. 1209/2003, 1231/2003 and 1241/2004*

Submitted by: Mrs. Bakhrinisso Sharifova (1209/2003), Saidali Safarov (1231/2003), Kholmurod Burkhonov (1241/2004) (not represented by counsel)

Alleged victims: Messrs. Ekubdzhon Rakhmatov (Bakhrinisso Sharifova's son), Alisher and Bobonyoz Safarov and Farkhod Salimov (Saidali Safarov's sons and nephew, respectively), Shakhobiddin Mukhammadiev (Kholmurod Burkhonov's son)

State party: Tajikistan

Date of communications: 30 April 2003 (initial submissions)

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

Meeting on 1 April 2008,

Having concluded its consideration of communications Nos. 1209/2003, 1231/2003 and 1241/2004, submitted to the Human Rights Committee on behalf of Messrs. Ekubdzhon Rakhmatov, Alisher Safarov, Bobonyoz Safarov, Farkhod Salimov and Shakhobiddin Mukhammadiev under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The first author is Mrs. Bakhrinisso Sharifova, a Tajik national born in 1956, who submits the communication on behalf of her son, Mr. Ekubdzhon Rakhmatov, also a Tajik national born in 1985. The second author is Mr. Saidali Safarov, a Tajik national born in 1946, who submits the communication on behalf of his sons, Messrs. Alisher and Bobonyoz Safarov, both Tajik citizens born in 1978 and 1973, respectively; as well as his nephew, Mr. Farkhod Salimov, a Tajik national born in 1982. The third author is Mr. Kholmurod Burkhonov, a Tajik national born in 1942, who submits the communication on behalf of his son, Mr. Shakhobiddin Mukhammadiev, also Tajik born in 1984. At the time of submission of the communications, all five victims were serving their sentences in colony No.7 in Dushanbe, Tajikistan. The authors claim violations by Tajikistan of the alleged victims' rights under article 7; article 9, paragraphs 1 and 2; article 10; article 14, paragraphs 1, 3(b), 3(d), 3(e) and 3(g), of the International Covenant on Civil and Political Rights. Although the first and third authors do not invoke it

* 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. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

specifically, their communications appear to raise issues under article 14, paragraph 4, in respect of Messrs Ekubdzhon Rakhmatov and Skahobiddin Mukhammadiev. The authors are unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

The facts as presented by the authors

2.1 During the night of 5 to 6 August 2001, the house of one Mr. Isoev was burgled in Morteppa, Gissar district of Tajikistan. Six individuals were arrested (*задержаны*) in August 2001 and June 2002 on the suspicion of having committed the burglary, including the alleged victims. They were sentenced as co-defendants by the Judicial Chamber for Criminal Cases of the Supreme Court on 25 November 2002 to different prison terms.

Case of Mr. Ekubdzhon Rakhmatov

2.2 Mr. Rakhmatov was arrested by militia officers on 8 August 2001. The arrest protocol was only drawn up on 11 August 2001. On an unspecified date, he was charged with burglary committed with use of weapons, ammunition or explosives, under article 249, part 4(c) of the Criminal Code. During his pre-trial investigation he was allegedly subjected to torture for the purpose of extracting a confession. The first author claims that her son was kicked, beaten with truncheons, handcuffed and hung from the ceiling, beaten on his kidneys and tortured with electric current. For three days he was deprived of food, parcels sent by his family were not transmitted to him and relatives were denied access to him. The officers who tortured him included district militia officers, officers of the Criminal Investigation Department and an investigator of the Department of Internal Affairs, Gissar district. The names of eight officers implicated in the torture are on file. Mr. Rakhmatov was told that if he did not confess, his parents would face 'serious problems'. Subsequently, on an unspecified date, his father was charged with "hooliganism" and sentenced. The first author states that, unable to withstand the beatings and psychological pressure, her son confessed to the charges against him. On an unspecified date, her son was beaten up by Mr. Isoev in the investigator's presence and his face was scratched by one of the district militia officers. Investigators, however, subsequently claimed that Mr. Rakhmatov's face was scratched by Mr. Isoev's wife in self-defence during the burglary. This argument was subsequently used by the prosecution as a proof of positive identification of Mr. Rakhmatov by Mr. Isoev's wife as one of the burglars during the identification parade.

2.3 According to the first author, the investigators had planned the verification of her son's confession at the crime scene in advance. Some days before the actual verification, her son was brought to the crime scene, where it was explained to him where he should stand, what to say. He was shown to individuals who later identified him during an identification parade.

2.4 The first author states that, at the time of his arrest, her son was a minor, and that, according to article 51 of the Criminal Procedure Code (CPC), the authorities were required to provide him with a lawyer from the moment of his arrest. In reality, he only was given a lawyer on 14 August 2001. Further, the first author submits that, where a minor is charged together with adults, article 141 of the CPC requires that the criminal investigation into the activities of the minor should be separated from those of the adults at pre-trial investigation stage whenever possible. This was not done in Mr. Rakhmatov's case. Contrary to article 150 of the Criminal Procedure Code, his interrogation and other investigative actions were carried out in the absence of lawyer.

2.5 The first trial of Mr. Rakhmatov by the Judicial Chamber for Criminal Cases of the Supreme Court took place from 13 March to 26 April 2002. The first author claims that her son's trial was not fair and that the court was partial. Thus:

- a) The first author's son retracted his confessions obtained under torture during the pre-trial investigation in court and claimed to be innocent. He affirmed that when the crime was committed he had an alibi that could be confirmed by numerous witnesses. The testimonies of Mr. Rakhmatov and of witnesses appearing on his behalf were ignored.
- b) Several witnesses against Mr. Rakhmatov made contradictory depositions.
- c) The prosecution exercised pressure on the witnesses and the presiding judge limited the lawyer's possibility to ask questions.

d) The court did not objectively examine the circumstances of the crime – such as the nature of the crime committed or the existence of a causal link between the criminal acts and their consequences.

(e) Allegedly no witness could identify the co-accused in court as participants in the crime.

2.6 In the course of the first trial, another defendant facing another charge, one Mr. Rasulov, was examined in court in the case of Mr. Isoev's house burglary. On 26 April 2002, the judge referred the latter case back to the General Prosecutor for further investigation and elimination of inconsistencies. On 15 July 2002, Mr. Rasulov wrote a letter to the Chairperson of the Supreme Court, in which he confessed to having burgled Mr. Isoev's house, expressed readiness to identify Mr. Isoev's stolen belongings and Mr. Isoev's family, and requested the Chairperson to take this information into account in the case of the other individuals who were wrongly accused of having committed this crime. Mr. Rasulov's testimony, however, was ignored as unreliable during the second trial which took place from 3 September to 25 November 2002.

2.7 From the judgment of the Judicial Chamber for Criminal Cases of the Supreme Court of 25 November 2002, it becomes clear that the Judicial Chamber examined the victims' statements to the effect that their confessions had been obtained under torture during pre-trial investigation and concluded that they were not trustworthy. The Court considered them as an attempt to avoid responsibility and punishment for the crime committed. The judgment notes that testimonies of a number of district militia officers, officers of the Criminal Investigation Department and an investigator of the Department of Internal Affairs, Gissar district, were examined in court. Specifically, the prosecutor and deputy prosecutor of the Gissar district testified that Messrs. Rakhmatov, Alisher Safarov and Salimov's parents filed a complaint with the prosecutor's office, alleging that during the pre-trial investigation their sons were forced to confess to having committed the burglary of Mr. Isoev's house under torture. These allegations were reportedly investigated by an independent expert from Dushanbe, who interrogated the alleged victims and ordered their medical examination. This revealed some bruises on Alisher Safarov's left shoulder that reportedly preceded his arrest; no other injuries on any of the alleged victims were identified. Since all victims confirmed that they had confessed guilt voluntarily, an investigation of the parents' complaint was terminated and they were sent an official reply on the matter.

2.8 On 25 November 2002, the Judicial Chamber for Criminal Cases of the Supreme Court sentenced Mr. Rakhmatov to 7 years' imprisonment. A cassation appeal to the Judicial Chamber for Criminal Cases of the Supreme Court was dismissed on 25 February 2003.

2.9 The first author notes that the investigator of the Department of Internal Affairs of the Gissar district, who was implicated in her son's torture, was later indicted for taking bribes in the context of this same case. The criminal charges against him, however, were later dropped and he was transferred to another district.

Cases of Messrs. Alisher Safarov and Bobonyoz Safarov

2.10 On 9 August 2001, Mr. Alisher Safarov was arrested at his family's home by militia officers and brought to the Department of Internal Affairs (Gissar district). The arrest protocol was only drawn up on 11 August 2001. He was subjected to the physical torture as described in paragraph 2.2 above, and also threatened with creating 'serious problems' for his parents if he did not confess to the allegations against him. These threats, however, did not materialise. Furthermore, officers of the Department of Internal Affairs, Gissar district, were aware that Mr. Alisher Safarov suffers from the night blindness since childhood, and were deliberately interrogating him at night. Unable to withstand the beatings and psychological pressure, he confessed to the charges against him.

2.11 When the case was sent back to the prosecutor for further investigation (see paragraph 2.6 above), the second author's elder son, Mr. Bobonyoz Safarov, was arrested during the night of 5 to 6 June 2002. The second author claims that the arrest took place without an arrest warrant issued by the prosecutor, and that his son was held in detention in the Department of Internal Affairs for 15 days and tortured with a view to extracting a confession, before being transferred to the Investigation Detention Centre.

2.12 The remaining facts of Messrs. Alisher and Bobonyoz Safarov's case presented by the second author are identical to those described in paragraphs 2.3, 2.5 – 2.7 and 2.14. On 25 November 2002, the Judicial Chamber for Criminal Cases of the Supreme Court sentenced them to 10 years' imprisonment, with confiscation of property. A cassation appeal to the Judicial Chamber for Criminal Cases of the Supreme Court was dismissed on 25 February 2003.

Case of Mr. Farkhod Salimov

2.13 On 8 August 2001, Mr. Salimov was arrested at his family's home by militia officers and brought to the Department of Internal Affairs, Gissar district. The arrest protocol was only drawn up on 11 August 2001. He was subjected to physical torture as described in paragraph 2.2 above, and also threatened with creating 'serious problems' for his parents if he did not confess to the allegations against him. These threats, however, did not materialise. Unable to withstand the beatings and psychological pressure, he confessed to the charges against him. The remaining facts of the case presented by the second author are identical to those described in paragraphs 2.3, 2.5 – 2.7 and 2.14. On 25 November 2002, the Judicial Chamber for Criminal Cases of the Supreme Court sentenced Mr. Salimov to 10 years' imprisonment, with confiscation of property. A cassation appeal to the Judicial Chamber for Criminal Cases of the Supreme Court was dismissed on 25 February 2003.

Case of Mr. Shakhobiddin Mukhammadiev

2.14 On 7 August 2001, Mr. Mukhammadiev, a relative of Mr. Isoev and a minor at that time, was arrested at his grandfather's home by the district militia officer accompanied by Mr. Isoev. The arrest protocol was only drawn up on 11 August 2001. He was subjected to torture as described in paragraph 2.2 above and, unable to withstand the beatings and psychological pressure, he confessed to the charges against him. His confession and testimonies were drawn up on his behalf by militia officers and by the investigator of the Department of Internal Affairs, Gissar district, and only shown to Mr. Mukhammadiev for him to sign. On a few occasions, he was forced to sign blank pages of paper that were later filled in by the investigator. On 17 August 2001, while being interrogated by the prosecutor and deputy prosecutor of the Gissar district at pre-trial investigation, he stated that he had not committed the crime in question and that his confession was obtained under duress. This statement was ignored by the prosecutor and deputy prosecutor, and no forensic medical examination was carried out. Moreover, the same day, Mr. Mukhammadiev was allegedly pressured by the investigator to withhold the statement he had given to the prosecutor. On 18 August 2001, unable to withstand the pressure, he withdrew the statement. The rest of the facts of Mr. Mukhammadiev's case presented by the third author are identical to those described in paragraphs 2.3 – 2.7 above. On 25 November 2002, the Judicial Chamber for Criminal Cases of the Supreme Court sentenced Mr. Mukhammadiev to 7 years' imprisonment. A cassation appeal to the Judicial Chamber for Criminal Cases of the Supreme Court was dismissed on 25 February 2003.

The complaint

3.1 All authors claim that in violation of articles 7 and 14, paragraph 3(g), the alleged victims were beaten, tortured, and put under psychological pressure and thus forced to confess guilt.

3.2 The alleged victims' rights under article 9, paragraphs 1 and 2, were reportedly violated, because they were arrested unlawfully and were not charged for long periods of time after their arrest.

3.3 They claim that in violation of article 10, conditions of detention during the early stages of the alleged victims' confinement were inadequate. In order to exercise psychological pressure on the alleged victims, the latter were threatened that their parents would be tortured. For three days, they were deprived of food, parcels sent by their families were not transmitted to them and relatives were denied access to them. The food received during the later stages of detention was monotonous and inadequate.

3.4 The authors claim that the alleged victims' rights under article 14, paragraph 1, were violated because the trial court was partial. Article 14, paragraph 3(e), was violated as the testimonies of the witnesses on their behalf were rejected under the simple pretext that they were false.

3.5 They also claim that the alleged victims' rights under article 14, paragraphs 3(b) and (d), were violated without specifying, however, what exact actions or omissions by the State party's authorities they considered to have been in contravention of these Covenant provisions.

3.6 Although the first and third authors do not invoke it specifically, their communications appear to raise issues under article 14, paragraph 4, in respect of Messrs Ekubdzhon Rakhmatov and Skahobiddin Mukhammadiev.

State party's failure to cooperate

4. By Notes Verbales of 28 October 2003 (Rakhmatov), 2 December 2003 (Safarovs, Salimov), 20 January 2004 (Mukhammadiev), 18 November 2005 (Rakhmatov), 21 November 2005 (Safarovs, Salimov, Mukhammadiev) and 7 September 2006 (Rakhmatov, Safarovs, Salimov, Mukhammadiev), the State party was requested to submit to the Committee information on the admissibility and merits of the communications. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.³²²

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the Optional Protocol.

5.3 The second author claims that in violation of article 7; article 10; and article 14, paragraph 3(g), his elder son, Mr. Bobonyoz Safarov, was beaten, tortured, put under psychological pressure in order to obtain a confession, as well as detained in inadequate conditions. The second author, however, has not provided any details or supporting documents in substantiation of these claims. It remains unclear whether these allegations were ever raised in court in relation to this particular victim. In the circumstances, the Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

5.4 The authors claim that the alleged victims' rights under article 9, paragraphs 1 and 2, were violated, as they were arrested unlawfully and detained for long periods of time without being charged. The Committee notes, however, that the material before it does not allow it to establish the exact circumstances of their arrest, or the exact dates on which they were charged. It also remains unclear whether these allegations were ever raised before the domestic courts. In these circumstances, the Committee considers that this part of the communications is unsubstantiated, for purposes of admissibility, and therefore inadmissible under article 2 of the Optional Protocol.

5.5 The authors further claim that the alleged victims' rights under article 14, paragraph 3(b) and (d), were violated. The State party has not commented on these allegations. The Committee notes, however, that the second author has failed to provide any detailed information or documents in support of this claim in relation to Messrs. Alisher Safarov, Bobonyoz Safarov and Salimov, and that it also remains unclear whether the allegations in question were ever drawn to the attention of the State party's courts in relation to Messrs. Rakhmatov and Mukhammadiev. In these circumstances, the Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

³²² See, e.g., Communication No. 1208/2003, Kurbonov v. Tajikistan, views adopted on 16 March 2006, paragraph 4.

5.6 The authors also claim that contrary to article 14, paragraph 3(e), the court heard the testimonies of witnesses on the alleged victims' behalf and then simply ignored them. The State party has not commented on this claim. The Committee notes however, that the material available to it does not permit to conclude that the court indeed failed to evaluate the testimonies in question or to assess them. In the circumstances, and in the absence of any other pertinent information in this regard, the Committee considers this part of the communication inadmissible as unsubstantiated under article 2 of the Optional Protocol.

5.7 The Committee considers that the remaining part of the authors' allegations, raising issues under article 7; article 14, paragraph 3(g); article 10; and article 14, paragraph 1, in relation to Messrs Ekubdzhon Rakhmatov, Alisher Safarov, Farkhod Salimov and Shakhobiddin Mukhammadiev, the second author's allegations raising issues under article 14, paragraph 1, in relation to Mr. Bobonyoz Safarov, as well as the first and third authors' allegations raising issues under article 14, paragraph 4 (in relation to Messrs Ekubdzhon Rakhmatov and Skahobiddin Mukhammadiev) have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

6.1 The Human Rights Committee has considered the communications 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.

6.2 The authors claim that the alleged victims were beaten and tortured by district militia officers, officers of the Criminal Investigation Department and an investigator of the Department of Internal Affairs, Gissar district, to make them confess their guilt, contrary to article 7 and article 14, paragraph 3(g), of the Covenant. In the absence of any explanation from the State party, due weight must be given to the authors' allegations. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.³²³ In this respect, the Committee notes the authors' detailed description of the treatment to which their relatives were subjected (paragraphs 2.2, 2.8, and 2.12 above), except in relation to one alleged victim, Mr. Bobonyoz Safarov (paragraphs 2.11 and 5.3 above). They have also identified the alleged perpetrators of these acts. The material before the Committee also reveals that the allegations of torture were brought to the attention of the Prosecutor's Office of the Gissar district and that they were raised in court. The Committee considers that in these circumstances, the State party has failed to demonstrate that its authorities adequately addressed the torture allegations advanced by the authors.

6.3 Furthermore, on the claim of a violation of the alleged victims' rights under article 14, paragraph 3 (g), in that they were forced to sign a confession, the Committee must consider the principles that underlie this guarantee. It recalls its previous jurisprudence that the wording, in article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities on the accused with a view to obtaining a confession of guilt.³²⁴ The Committee recalls that in cases of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will³²⁵. In the circumstances, the Committee concludes that the facts before it disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant (except in relation to Mr. Bobonyoz Safarov).

6.4 The authors claim that the conditions of detention during the early stages of the alleged victims' confinement were inadequate. They point out that, in order to exercise psychological pressure on the victims, the latter were threatened that their parents would be harmed, should they do not confess guilt. In addition, they were deprived of food for three days and parcels sent by their families were not transmitted to them and relatives were denied access to them. Finally, the food provided to the victims during the later stages of detention was monotonous and inadequate. The State party has not commented on these allegations, and in the circumstances, due weight must be given to the authors' allegations. The Committee, therefore, concludes that the facts before it amount to a violation by the State party of the alleged victims' rights under article 10 of the Covenant (except in relation to Mr. Bobonyoz Safarov).

6.5 The authors claim a violation of article 14, paragraph 1, as the trial did not meet the requirements of fairness and that the court was biased (see paragraphs 2.5-2.7, and 2.12-2.14 above). The Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the court. 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 justice.³²⁶ It further notes, however, that in the present case, the State party has not presented any information to refute the authors' allegations and to demonstrate that the alleged victims' trial did in fact not suffer

³²³ See, e.g., Communication No. 781/1997, *Aliiev v. Ukraine*, views adopted on 7 August 2003, paragraph 7.2.

³²⁴ Communication No. 330/1988, *Berry v. Jamaica*, views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, views adopted on 1 November 2004, paragraph 5.1.

³²⁵ See General Comment No. 32, paragraph 49, CCPR/C/GC/32, 23 August 2007.

³²⁶ See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

from any such defects. Accordingly, the Committee concludes that in the circumstances of the present case, the facts as submitted amount to a violation by the State party of the alleged victims' rights under article 14, paragraph 1, of the Covenant.

6.6 The first and third authors have also claimed, in relation to their respective sons Messrs. Ekubdzhon Rakhmatov and Skahobiddin Mukhammadiev, that at the time of arrest, both alleged victims were minors, but did not benefit from the special guarantees prescribed for criminal investigation of juveniles; the State party has not commented on these allegations. These allegations raise issues under article 14, paragraph 4, of the Covenant. The Committee recalls³²⁷ that juveniles are to enjoy at least the same guarantees and protection as those accorded to adults under article 14 of the Covenant. In addition, juveniles need special protection in criminal proceedings. They should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence. In the present case, Messrs Ekubdzhon Rakhmatov and Skahobiddin Mukhammadiev were arrested without access to a defence lawyer. In the circumstances, and in the absence of any other pertinent information, the Committee concludes that Messrs Ekubdzhon Rakhmatov's and Skakhobiddin Mukhammadiev's rights under article 14, paragraph 4, of the Covenant have been violated.

7. 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 rights of Messrs Ekubdzhon Rakhmatov, Alisher Safarov, Farkhod Salimov and Shakhobiddin Mukhammadiev under article 7, read together with article 14, paragraph 3(g); article 10; and article 14, paragraph 1; a violation of the rights of Mr. Bobonyoz Safarov under article 14, paragraph 1 only; and a violation the rights of Messrs Ekubdzhon Rakhmatov's and Skakhobiddin Mukhammadiev under article 14, paragraph 4, of the Covenant.

8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Messrs Ekubdzhon Rakhmatov, Alisher and Bobonyoz Safarov, Farkhod Salimov and Shakhobiddin Mukhammadiev with an effective remedy, to include such forms of reparation as early release and compensation. The State party is also under an obligation to prevent similar violations in the future.

9. 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.]

³²⁷ See the Committee's General Comment No. 32 (article 14 ICCPR), paragraphs 42 and al., CCPR/C/GC/32, 23 August 2007



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/89/D/1108&1121/2002
3 May 2007

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communications Nos. 1108/2002 and 1121/2002

<u>Submitted by:</u>	Mr. Makhmadim Karimov and Mr. Amon Nursatov (not represented by counsel)
<u>Alleged victims:</u>	Aidamir Karimov (Makhmadim Karimov's son), Saidabrор Askarov, Abdumadzhid Davlatov and Nazar Davlatov (Nursatov's brother and cousins respectively).
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	16 August and 24 September 2002, respectively (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 19 August (Karimov) and 25 September 2002 (Askarov/Davlatovs), not issued in document form
<u>Date of adoption of Views:</u>	27 March 2007

GE.07-41637

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial and absence of legal representation in capital case.

Substantive issue: Torture; Unfair trial; Right to life; conditions of detention

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

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

Article of the Optional Protocol: 2

On 27 March 2007 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 communications Nos. 1108/2002 and 1121/2002.

[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 Eighty-ninth session

concerning

Communications Nos. 1108/2002 and 1121/2002**

<u>Submitted by:</u>	Mr. Makhmadim Karimov and Mr. Amon Nursatov (not represented by counsel)
<u>Alleged victims:</u>	Aidamir Karimov (Makhmadim Karimov's son), Saidabrор Askarov, Abdumadzhid Davlatov and Nazar Davlatov (Nursatov's brother and cousins respectively).
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	16 August and 24 September 2002, respectively (initial submission)

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

Meeting on 27 March 2007,

Having concluded its consideration of communications Nos. 1108/2002 and 1121/2002, submitted to the Human Rights Committee on behalf of Mr. Aidamir Karimov, Mr. Saidabrор Askarov, Mr. Abdumadzhid Davlatov and Mr. Nazar Davlatov 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:

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

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

1.1 The first author is Makhmadim Karimov, a Tajik national born in 1950, who submits the communication on behalf of his son, Aidamir Karimov, also Tajik national born in 1975. The second author is Mr. Amon Nursatov, a Tajik national born in 1958, who submits the communication on behalf of his brother Saidabrор Askarov³²⁸, and his cousins Abdumadzhd Davlatov and Nazar Davlatov, both Tajiks born in 1975. At the time of submission of the communications, all four victims were awaiting execution, after being sentenced to death by the Military Chamber of the Supreme Court on 27 March 2002. The authors claim violations by Tajikistan of the alleged victims' rights under article 6, paragraphs 1 and 2; article 7; article 9, paragraphs 1 and 2; article 10; and article 14, paragraphs 1, and 3, (e) and (g), of the Covenant³²⁹. The second author invokes in addition violations of article 14, paragraph 3 (b) and (d) in relation to his brother Askarov; the communication appears to raise similar issues also in relation to Aidamir Karimov. They are unrepresented.

1.2 Pursuant to article 92 of its rules of procedures, when registering the communications, the Committee, acting through its Special Rapporteur of New Communications and Interim Measures, on 19 August (Karimov) and 25 September 2002 (Askarov/Davlatovs) respectively, requested the State party not to carry out the alleged victims' executions while their cases are under examination by the Committee. Later, the State party explained that all the death sentences of the alleged victims were commuted to 25 years' imprisonment.

The facts as submitted by the authors

2.1 On 11 April 2001, at around 8 a.m., the First-Deputy Minister of Internal Affairs of Tajikistan, Khabib Sanginov, was shot dead in his car near his house in Dushanbe. Two bodyguards and the car driver also died in the ambush. Seven individuals were arrested during 2001 as suspects in the murders, including the alleged victims.

The case of Aidamir Karimov

2.2 On an unspecified date in early June 2001, Aidamir Karimov was arrested in Moscow on charges of terrorism, pursuant an arrest warrant issued by the Tajik Prosecutor's Office that was transmitted to the Russian authorities. He was remitted to the Tajik authorities and arrived in Dushanbe allegedly on 14 June 2001, but his relatives were informed of this only five days after his arrival.

2.3 He was detained for two weeks on premises of Dushanbe's Internal Affairs' Department. The author claims that the building is not adapted for prolonged detentions, and the maximum allowed period for detention there is three hours. His son was transferred to a Temporary Detention Centre only two weeks later (exact date not specified) and kept there for two months, instead of the statutorily maximum authorised 10 days. Afterwards, he was transferred to the Investigation Detention Centre No 1 in Dushanbe, but was systematically brought to the Internal Affairs' Department and subjected to long interrogations there that went on all day and often continued into the night. The food was insufficient and the parcels his family transmitted to the authorities did not reach him.

2.4 On 11 September 2001, the author's son was officially charged with premeditated murder under aggravating circumstances, accomplished with a particular violence, with use of explosives, acting in an organised group, theft of fire arms and explosives, illegal acquisition of fire arms and explosives, and deliberate deterioration of property.

2.5 During the preliminary investigation, the author's son was allegedly subjected to torture to force him to confess guilt. He was beaten, kicked in the kidneys, and beaten with batons. Allegedly, he received electroshocks with the use of a special electric device: electric cables were attached to different parts of his body (they were placed in his mouth and attached to his teeth, as well as to his genitals). According to the author, one of his son's torturers was I.R., deputy head of the Criminal Search Department of Dushanbe. His son was also threatened that if he did not confess guilt, his parents would also be arrested. These threats were taken seriously by his son, because he was aware that his two brothers and his father had already

³²⁸ Both the author and the State party use two names in relation to Mr. Nursatov's brother: Saidabrор Askarov and Said Rezvonzod.

³²⁹ The Optional Protocol entered into force for the State party on 4 April 1999.

been arrested on 27 April and released on 28 May 2001. In these circumstances, he confessed and signed the confession (exact date not provided).

2.6 The author affirms that no relatives could see his son during the initial two months after arrest. His family met with him only once during the preliminary investigation, in the investigators' presence.

2.7 According to the author, the investigators had planned an investigation act – a verification of his son's confession at the crime scene – in advance. Two days before the actual verification, his son was brought to the crime scene where he was explained where to stand, what to say, and was shown to the individuals who later identified him during an identification parade. The reconstruction at the crime scene allegedly took place in the presence of 24 investigators, and his son was obliged to repeat what he had been previously instructed to say.

2.8 The author affirms that his son was given a lawyer by the investigators towards the beginning of the preliminary investigation, but the lawyer "acted passively" and was often absent. For this reason, two months after the beginning of the preliminary investigation, the author hired privately a lawyer to represent his son. His son allegedly immediately retracted his confessions and affirmed that they had been extracted under torture. The investigators allegedly refused to video tape his retraction and wrote a short note for the record.

2.9 The preliminary investigation ended on 15 November 2001. The case was examined by the Military College of the Supreme Court³³⁰ from 8 January to 27 March 2002. On 27 March 2002, all alleged victims were sentenced to death. The author claims that his son's trial was not fair and that the court was partial. In substantiation, he affirms that:

(a) The court refused to order the removal of the handcuffs of the accused, thus preventing them from taking notes, although they were all sitting inside a metal cage in the court room. The alleged victims' presumption of innocence was violated because the chief of security, General Saidamorov, stated in court that it was impossible to remove handcuffs as the accused were "dangerous criminals" and could escape.

(b) At the end of the preliminary investigation, the author's son's indictment contained only three charges against him. At the beginning of the trial, the judge read out two new counts against him; this constitutes, according to the author, a violation of his son's right to be promptly informed of charges against him;

(c) The author's son retracted his confessions in court and claimed to be innocent. He affirmed that when the crime was committed, he was not in Dushanbe. This was confirmed by 15 witnesses, who testified that from 7 to 22 April he was in the Panch Region. These testimonies were allegedly ignored.

(d) Several witnesses against Karimov made contradictory depositions.

(e) The prosecution exercised pressure on the witnesses, limited the lawyers' possibility to ask questions, and interrupted the lawyers and witnesses allegedly in an aggressive manner.

(f) The court did not objectively examine the circumstances of the crime – the nature of the crime committed or the existence of a causal link between the acts and their consequences.

(g) Allegedly no witness could identify the co-accused in court as participants in the crime.

(h) According to the author, the conviction itself does not comply with the requirement of proportionality between crime and punishment, as those who were found to be the organisers of the crime received lighter sentences (15 to 25 years' of imprisonment) than those who were found to be the executors and who were sentenced to death.

³³⁰ The author explains that the case was adjudicated by the Military Chamber because one of the accused was a member of the military forces.

2.10 On 29 April 2002, the Supreme Court confirmed on appeal the judgment of 27 March 2002. On 27 June 2002, the Supreme Court refused a request for a supervisory review³³¹.

The case of Saidabrор Askarov, and Abdumadzhid and Nazar Davlatovs

2.11 The second author, Mr. Nursatov, affirms that following the murder of Sanginov, several suspects were arrested, including his brother, Saidabrор Askarov and the Davlatov brothers, as well as Karimov.

2.12 The author claims that after Askarov's arrest (exact date not provided), the latter was held in a building of the Ministry of Internal Affairs for a week. The author affirms that the Ministry's premises are inadequate for a long detention. On 4 May 2001, his brother was transferred to a Temporary Detention Centre where, instead of the statutorily authorised period, he was kept until 24 May 2001, and then he was transferred to the Investigation Detention Centre No 1. During the initial month of detention, Askarov was interrogated at the Ministry of Internal Affairs' building all day long and often interrogatories continued into the night. An official record of his arrest was allegedly produced only on 4 May 2001 and he was placed in custody by a decision the same day. Abdulmadzhid and Nazar Davlatovs were sent to the Temporary Detention Centre on 5 May, and transferred to the Investigation Centre No.1 on 24 May 2001.

2.13 The author claims that during the first three days of detention, Askarov and the Davlatov brothers were not given any food but received only limited quantities of water. The food provided to the detainees was insufficient and the parcels the family sent to the authorities did not reach the detainees.

2.14 According to the author, his brother Askarov was subjected to beatings and torture to force him to confess guilt. He allegedly received electric shocks with a special device, and electric cables were introduced into his mouth and anus or were attached to his teeth or genitals. One of his fingers was broken³³². In addition, he was placed under psychological pressure, because his brothers Amon (the author of the present communication) was also arrested together with their other brother, Khabib, on 27 April, and detained until 29 May 2001, and their fourth brother, Sulaymon, was also arrested on 27 April and released two months later. Askarov was constantly reminded of his brothers' arrests. Because of this treatment, Askarov and Davlatovs signed confessions.

2.15 Allegedly, Askarov was only allowed to meet with relatives for ten minutes six months after arrest (exact date not provided), in investigators' presence. Nazar Davlatov met his relatives only at the beginning of the trial, whereas Abdumadzhid Davlatov saw his mother only six months after his arrest.

2.16 The author affirms that his brother was not informed of his right to be represented by a lawyer from the moment of arrest, nor of the right to have a lawyer designated free of charge in case of lack of financial means. On 23 June 2001, the investigators appointed a lawyer (Aliev) for him. After one month, the family privately retained a lawyer, Fayzullaev, because all attempts to meet with the investigation-appointed lawyer failed. The new lawyer was allegedly forced to withdraw by the investigators, because he complained to the Prosecutor General about the illegality of Askarov's charges. After that, they privately hired a third lawyer.

2.17 In court, Askarov and the Davlatov brothers retracted their confessions. They claimed innocence and affirmed that they were in Panch region from 9 to 14 April 2001. This was confirmed by five witnesses. The court concluded that the court depositions, including the allegations of torture, were made in order to escape criminal liability.

2.18 The author presents similar claims to those made on behalf of Karimov (paragraph 2.9, letters (e) to (h) above).

³³¹ The supervisory review procedures empower the President of the Supreme Court or the Prosecutor General (or their deputies) to introduce (or not) a motion to the Court with a request for the reexamination of a case (on issues of law and procedure only).

³³² The author claims that one of the persons that tortured his brother was Rasulov, deputy chief of Dushanbe's Criminal Search Department. Every day he visited the Temporary Detention Centre to check whether there «were good news for him ». Receiving a negative reply, he beat Askarov.

2.19 The judgment against Askarov and the Davlatov brothers was confirmed, on 29 April 2002, by the Supreme Court's Criminal Chamber.

The complaint

Karimov's case

3.1 The author claims that in violation of articles 7 and 14, paragraph 3 (g), his son was beaten, tortured, and put under psychological pressure and thus forced to confess guilt.

3.2 His son's rights under article 9, paragraphs 1 and 2 were violated, because he was arrested unlawfully and was not charged for a long period of time after arrest.

3.3 He claims that in violation of article 10, the conditions of detention during the early stages of his son's arrest were inadequate. The food received was insufficient and the parcels sent by the family were not transmitted to him.

3.4 The author further claims that his son's rights under article 14, paragraph 1, were violated because the court was partial. His son's presumption of innocence was violated, contrary to article 14, paragraph 2, because of the statement of the high ranked policeman in court that the accused were "dangerous criminals". He adds that article 14, paragraph 3 (e), was violated as the testimonies of the witnesses on his son's behalf were rejected under the simple pretext that they were false.

3.5 Finally, it is claimed that Karimov's rights under article 6, paragraphs 1 and 2 were violated, as he was sentenced to death after an unfair trial which violated article 14, of the Covenant.

3.6 While the author does not invoke article 14, paragraph 3 (b) and (d) specifically, the communication appears to raise issues under these provisions in Karimov's respect.

Askarov and Davlatov brothers' case

3.7 Mr. Nursatov claims a violation of article 7, and article 14, paragraph 3 (g), as his brother Askarov and his cousins Abdumadzhid and Nazar Davlatov were tortured and forced to confess guilt.

3.8 Article 9, paragraphs 1 and 2, were violated in their cases, because they were detained for long periods of time without being informed of their charges on arrest.

3.9 The author claims that his brother's and cousins' rights under article 10 of the Covenant were also violated as at the early stages of detention, they were kept at premises that were inadequate for long detention, they were given no food and only limited quantities of water, and the parcels their family prepared for them never reached them.

3.10 The author claims that the court was partial, in violation of article 14, paragraph 1. He adds that article 14, paragraph 2, was violated, because of the statement made by a senior security officer in court that the accused were "dangerous criminals".

3.11 According to the author, his brother's and cousins' right to a defence was violated, contrary to article 14, paragraph 3 (b) and (d).

3.12 Askarov and the Davlatov brothers allegedly are victims of a violation of article 14, paragraph 3 (e), because the testimonies of the witnesses on their behalf were rejected as "false".

3.13 Finally, the author claims that Askarov's and the Davlatov brothers' rights under article 6, paragraphs 1 and 2, were violated, because they were sentenced to death after a trial that did not meet the requirements of article 14.

State party's observations

Karimov's case

4.1 On 20 February 2003, the State party informed the Committee that pursuant a Ruling of the Presidium of the Supreme Court of 3 December 2002, Karimov's death sentence was commuted to a 25 years' prison term.

4.2 On 3 April 2006, the State party presented its observations on the merits. According to it, the Supreme Court examined the criminal case and recalled that the author's son was found guilty of a multitude of crimes, including murder, committed together with his co-accused Revzonzod (Askarov), the Davlatovs, Mirzoev and Yormakhmadov, and was sentenced to death on 27 March 2000.

4.3 The murder victim was an opposition leader and a member of the National Reconciliation Commission created in 1997. After the work of the Commission resumed in June 1999, he was appointed as First Deputy Minister of Internal Affairs. In this function he took a number of steps for the demilitarisation of armed opposition groups. He thus became a target of assassination attempts.

4.4 According to the Court, Karimov and the other co-accused were found guilty of murder, theft of fire arms and ammunitions, acting in an organised group, robbery, intentional deterioration of property, and illegal acquisition, storing, and carrying of fire arms and ammunition. Their guilt was established not only by their confessions made during the preliminary investigation, but also confirmed by the testimonies of many witnesses; as well as the records of several identification parades, face-to-face confrontations, records of the reconstruction of the crime scene; and the verification of depositions at the crime scene; seized fire arms, ammunition (bullets), conclusions of several medical-forensic and criminal experts, as well as other evidence collected. Karimov's acts were qualified correctly under the law, and his punishment was proportionate to the gravity and the consequences of the acts committed.

4.5 According to the court, the author's allegations that his son did not take part in the crime but was obliged to confess guilt during the preliminary investigation and the court convicted him on the basis of untrue and doubtful evidence, were not confirmed and were refuted by the material contained in the case file.

4.6 According to the State party, the author's allegations that his son was beaten and was kept unlawfully under arrest for a long period to force him confess guilt were rejected and were not corroborated by the circumstances and the material of the criminal case. The case file shows that Karimov left for the Russian Federation after the crime occurred. On 4 May 2001, the Tajik Prosecutor's Office charged him in absentia with terrorism, and an arrest warrant was issued against him. On this basis, he was arrested in Moscow on 14 June 2001. He was transferred to Dushanbe on 25 June 2001. The State party contends, without providing any documentary evidence, that Karimov was examined by a medical doctor upon arrival in Dushanbe, who concluded that his body did not reveal any bodily injuries as a result of ill-treatment. On 28 June 2001, in his lawyer's presence, Karimov described the crime events in detail at the crime scene, and on 30 June 2001, during a confrontation with his co-accused Mirzoev and again in their lawyers' presence, both co-accused reaffirmed that they had participated in the crime.

4.7 On 3 July 2001, Karimov was given a new lawyer and in his presence, during a reconstruction of the crime at the crime scene, he explained in detail how he had committed the crime.

4.8 The State party affirms, again without providing documentary evidence, that on 9 July 2001, Karimov was again examined by a medical expert, whose conclusions are contained in the case file, and which establish that Karimov's body did not show any marks of beatings and did not reveal any bodily injury.

The cases of Askarov and the Davlatov brothers

5. On 27 July 2004, the State party informed the Committee that after a Presidential Pardon, Askarov's and the Davlatovs' death sentences were commuted to long prison terms. Although several requests for submission of observations on the merits of the communication were addressed to the State party (on 10 March 2003, 20 September 2004, 17 November 2005, and 30 November 2006), no further information was received.

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 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.
- 6.2 The Committee notes that the same matter is not being examined under any other international procedure, as required by article 5, paragraph 2 (a), of the Optional Protocol.
- 6.3 The authors claim that the alleged victims' rights under article 9, paragraphs 1 and 2, were violated, as they were arrested unlawfully and detained for a long period of time without being charged. In relation to Karimov, the State party affirms that following the opening of the criminal case in relation to the murder, and in light of the depositions of other co-defendants, he was charged with participation in the murder and a search warrant was issued against him. The State party has not commented on this issue in relation to Nurstov's brother and cousins. The Committee notes, however, that the material before it does not permit it to establish the exact date of their respective arrests, and it also remains unclear whether these allegations were ever brought up in the court. In these circumstances, the Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and therefore inadmissible under article 2, and article 5, paragraph 2 (b), of the Optional Protocol.
- 6.4 Both authors claim that in violation of article 14, paragraph 1, of the Covenant, the trial did not meet the requirements of fairness and that the court was biased, (paragraph 2. 9 and 2. 18 above). The State party has not commented on these allegations. The Committee observes, however, that all of these allegations relate primarily to the evaluation of facts and evidence by the court. 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 justice³³³. However it falls under the Committee's competence to assess if the trial was conducted in accordance with article 14 of the Covenant. Nevertheless, in the present case, the Committee considers that the authors have failed to sufficiently substantiate their claims under this provision, and therefore this part of the communication is inadmissible under article 2 of the Optional Protocol.
- 6.5 The authors also claim that contrary to the requirements of article 14, paragraph 3 (e), the court heard the testimonies of witnesses on the alleged victims' behalf but simply ignored them. The State party has not made any observation in this relation. The Committee notes however, that the material available to it shows that the Court indeed evaluated the testimonies in question and concluded that they constituted a defence strategy. In addition, these allegations relate primarily to the evaluation of facts and evidence by the court. The Committee reiterates that it is generally for the courts of the States parties to evaluate facts and evidence, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. In the absence of other pertinent information that would demonstrate that the evaluation of evidence indeed suffered from such deficiencies in the present case, the Committee considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.
- 6.6 The Committee considers that the remaining part of Mr. Karimov's and Mr. Nursatov's allegations, raising issues under articles 6; 7 read together with article 14, paragraph 3 (g); article 14, paragraph 2; and article 10, in relation to all four alleged victims, as well as under article 14, paragraph 3 (b) and (d), in relation to Messrs Karimov and Askarov, are sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

- 7.1 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.
- 7.2 The authors claimed that the alleged victims were beaten and tortured by the investigators, so as to make them confess guilt. These allegations were presented both in court and in

³³³ See, *inter alia*, Communication No 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

the context of the present communication. The State party has replied, in relation to the case of Mr. Karimov, that these allegations were not corroborated by the materials in the case file, and that the alleged victim was examined on two occasions by medical doctors who did not find marks of torture on his body. The State party makes no comment in relation to the torture allegations made on behalf of Mr. Askarov and the Davlatov brothers. In the absence of any other pertinent information from the State party, due weight must be given to the authors' allegations. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially³³⁴. In the present case, the authors have presented a sufficiently detailed description of the torture suffered by Messrs Karimov, Askarov, and the Davlatov brothers, and have identified some of the investigators responsible. The Committee considers that in the circumstances of the case, the State party has failed to demonstrate that its authorities adequately addressed the torture allegations put forward by the authors. In the circumstances, the Committee concludes that the facts as presented disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

7.3 Both authors claim that the conditions of detention at the premises of the Ministry of Internal Affairs were inadequate having regard to the lengthy period of detention. They point out that the alleged victims were unlawfully detained during periods largely exceeding the statutorily authorised time limits for detention in premises of the Ministry of Internal Affairs, and in the Temporary Detention Centre. During this period, no parcels sent to the victims by their families were transmitted to them, and the food distributed in the detention facilities was insufficient. In addition, Mr. Askarov and the Davlatov brothers were denied food for the first three days of arrest. The State party has not commented on these allegations. In these circumstances, due weight must be given to the authors' allegations. The Committee considers therefore that the facts as submitted reveal a violation by the State party of Mr. Mr. Karimov's, Askarov's, and the Davlatov brothers' rights under article 10, of the Covenant.

7.4 Mr. Karimov and Mr. Nursatov claim that the alleged victims' presumption of innocence was violated, as in court they were placed in a metal cage and were handcuffed. A high ranked official publicly affirmed at the beginning of the trial that their handcuffs could not be removed because they were all dangerous criminals and could escape. The State party has not presented any observations to refute this part of the authors' claim. In the circumstances, due weight must be given to the authors' allegations. The Committee considers that the facts as presented reveal a violation of the alleged victims' rights under article 14, paragraph 2, of the Covenant.

7.5 Both authors invoke violations of article 14, paragraph 3 (b) and (d). The first author has claimed violations of Karimov's right to defence as although he was assigned a lawyer at the beginning of the preliminary investigation, this lawyer only occasionally attended the investigation hearings, to the point that a lawyer was hired privately to represent his son. Mr. Nursatov claims that his brother Askarov was not given a lawyer at the beginning of the investigation, although he risked the death sentence; when he was assigned an ex-officio lawyer, this lawyer was ineffective; and that the lawyer hired privately by his family was later forced to withdraw from the case. The State party has not refuted these allegations; in the circumstances the Committee concludes that they, since adequately substantiated, must be given due weight. The Committee recalls³³⁵ its jurisprudence that particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a lawyer at all stages of the proceedings. In the circumstances of the present case, the Committee concludes that Mr. Karimov's and Askarov's rights under article 14, paragraph 3 (b) and (d), were violated.

7.6 The Committee recalls that the imposition of a sentence of death upon conclusion of a trial that did not meet the requirements for a fair trial constitutes a violation of article 6 of the Covenant. In the present case, death sentences were imposed on all victims in violation of article 7 read together with article 14, paragraph 3 (g), as well as in violation of article 14, paragraph 2, of the Covenant. In addition, in relation to both Messrs Karimov and Askarov, the death sentence was imposed in violation of the fair trial guarantees set out in article 14, paragraph 3 (b) and (d), of the Covenant. Accordingly, the Committee concludes that the alleged victims' rights under article 6, paragraph 2, of the Covenant, have also been violated.

³³⁴ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

³³⁵ See for example *Aliiev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, paragraph 7.2.

8. 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 Messrs Davlatovs' rights under articles 6, paragraph 2; article 7 and 14, paragraph 3 (g) read together; article 10; and article 14, paragraph 2; as well as Messrs Karimov's and Askarov's rights under article 6, paragraph 2; article 7 read together with article 14, paragraph 3 (g); article 10; and article 14, paragraphs 2 and 3 (b) and (d), of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Messrs Karimov, Askarov, and Abdumadzhid and Nazar Davlatovs with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations 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 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 90 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.]



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communication 1348/2005

<u>Submitted by:</u>	Rozik Ashurov (represented by counsel, Solidzhon Dzhuraev)
<u>Alleged victims:</u>	The author's son, Olimzhon Ashurov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	7 June 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 January 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	20 March 2007

GE.07-41669

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of long-term imprisonment after arbitrary detention; unfair trial; torture.

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge / officer authorized by law to exercise judicial power; fair hearing; impartial tribunal; right to be presumed innocent; right to be promptly informed of charges; right to adequate time and facilities for the preparation of the defence; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to have a sentence and conviction reviewed by a higher tribunal.

Procedural issue: Non-substantiation

Articles of the Covenant: articles 7; 9, paragraphs 1, 2 and 3; 14, paragraphs 1, 2, 3(a), 3(b), 3(e), 3(g) and 5

Article of the Optional Protocol: article 2

On 20 March 2007, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1348/2005.

[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

Eighty-ninth session

concerning

Communication 1348/2005**

Submitted by: Rozik Ashurov (represented by counsel, Solidzhon Dzhuraev)

Alleged victims: The author's son, Olimzhon Ashurov

State party: Tajikistan

Date of communication: 7 June 2004 (initial submission)

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

Meeting on 20 March 2007,

Having concluded its consideration of communication No. 1348/2005, submitted to the Human Rights Committee on behalf of Olimzhon Ashurov 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. The author of the communication is Rozik Ashurov, a Tajik national of Uzbek origin born in 1934, who submits the communication on behalf of his son, Olimzhon Ashurov, also a Tajik national of Uzbek origin born in 1969, who currently serves a 20 year prison term in a prison in Tajikistan. The author claims that his son is a victim of violations by Tajikistan of his rights under article 7; article 9, paragraphs 1, 2 and 3; and article 14, paragraphs 1, 2, 3 (a), (b), (e), and (g), and 5 of the International Covenant on Civil and Political Rights.³³⁶ He is represented by counsel, Solidzhon Dzhuraev.

The facts as submitted by the author

2.1 The author's son was detained by officers of the Criminal Investigation Department of the Tajik Ministry of Interior (hereinafter, MoI) at the family home in Dushanbe at around 5 a.m. on 3 May 2002, in connection with an armed robbery which had occurred on the night of 5 to 6 May 1999 in the apartment of one Sulaymonov. A criminal case under article 249, part 4, paragraphs (a), (b) and (c) of the Tajik Criminal Code (hereinafter, the CC)³³⁷ was opened on 6 May 1999. On 6 July 1999, an investigator decided to suspend the investigation, because it was not possible to identify a suspect who could be prosecuted.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada and Sir Nigel Rodley.

³³⁶ The Optional Protocol entered into force for the State party on 4 April 1999.

³³⁷ At the time of consideration of the case of the author's son by the Tajik courts, the punishment provided under this article was a term of 15 - 20 years' imprisonment with confiscation of property or death penalty.

2.2 At the time of detention, the author's son was not informed of the reasons, nor was the family told where he was being taken. In fact, he was taken to the MoI where for the next three days he was subjected to torture, to force him to confess to the armed robbery of Sulaymonov's apartment. He was deprived of food and sleep; was placed in handcuffs which were then attached to a battery; was systematically beaten; and electric shocks were applied to his genitals and fingers. The author states that, unable to withstand the torture, his son gave a false confession on 5 May 2002. Handcuffed and in the absence of a lawyer, he was forced to sign the protocol of interrogation, and then to write a confession that was dictated by the investigator of the Section of Internal Affairs of Zheleznodorozhny district of Dushanbe, implicating himself and two of his friends, Shoymardonov and Mirzogulomov. The same day, he was forced to sign the protocol of confrontation with Sulaymonov and the protocol of verification of his testimony at the crime scene. The verification process was video taped; marks of torture on his face are visible on the video recording of 5 May 2002.

2.3 The detention protocol was drawn up by the investigator at 11:30 p.m. on 5 May 2002. At no stage were his rights explained to the author's son. In particular, he was not advised of his right to counsel from the moment of detention. Subsequently, he was not allowed to choose counsel. Instead, the investigator appointed his former assistant to represent the author's son during the pre-trial investigation. On 6 May 2002, the investigator requested the expert Toirov to tamper with the evidence by certifying that the fingerprints allegedly collected from Sulaymonov's apartment belonged to Olimzhon Ashurov. The latter fact was subsequently confirmed by Toirov himself in his written explanation to the Minister of Interior and acknowledged by the MoI letters of 10 February and 11 March 2004, addressed to the author's son and his counsel. On an unspecified date, the arrest of the author's son was endorsed by the prosecutor on the basis of the evidence presented by the investigator.

2.4 The trial took place in the Dushanbe city court from October 2002 to April 2003 (hereinafter, the 'first trial'). The author's son complained about being subjected to torture by the MoI officers. On 4 April 2003, the court referred the case to the Dushanbe City Prosecutor for further investigation, instructing him to examine Ashurov's torture allegations and to clarify gaps and discrepancies in the investigation of the case. The court decided that Ashurov should remain in custody. It transpires from the decision that the court found clear contradictions between the circumstances of the armed robbery described in Ashurov's indictment and the testimonies of Sulaymonov before the court. The court noted that the investigation had not established the identity of the person standing trial: Ashurov's lawyer presented to the court certificate No.005668, confirming that from 7 December 1996 to 15 July 1999, his client served a sentence in Kyrgyzstan. An inquiry by the Tajik Judicial College in Kyrgyzstan confirmed that Ashurov indeed was imprisoned in Kyrgyzstan, having been sentenced by the Osh Regional Court on 26 March 1997.

2.5 Contrary to the court ruling of 4 April 2003, the very investigator who attended Ashurov's mistreatment by MoI officers and who was suspected of having tampered with earlier evidence, was effectively commissioned to conduct further investigations into the case. The author states that this investigator once more tampered with evidence, destroying certain key documents in the case file. These documents included a certificate issued by the head of colony No.64/48 in Uzbekistan, which confirms that from 5 May 1997 to 5 August 1999, Ashurov's accomplice Shoymardonov served a sentence handed down by the Surkhandarya Regional Court in the Uzbek prisons Nos.64/48 and 64/1.

2.6 The author states that the deadline for his son's preventative detention expired on 12 August 2003; examination of the case materials by Ashurov and his counsel was completed on 31 August 2003; and the case was sent to court on 23 September 2003. Nonetheless, the investigator *de facto* illegally extended the term of his son's placement in and continued to backdate investigative actions, without officially reopening the investigation.

2.7 When the trial presided by the Deputy Chairperson of the Dushanbe city court resumed in October 2003 (hereinafter, the 'second trial'), the author's son and his counsel submitted two petitions complaining about torture and tampering with evidence by the investigator. They requested the court to inform them of the legal grounds for keeping Ashurov in custody between 31 August and 23 September 2003; to allow them to study all case file documents, and to instruct the investigative bodies to translate the indictment into Russian, as neither the accused, nor one of the two counsel for Ashurov mastered Tajik. Both petitions were ignored.

2.8 On 13 - 15 October 2003, the court hearing was conducted in the absence of the first counsel, who spoke Tajik, and without an interpreter. In the absence of the Tajik speaking counsel, the judge changed the transcript of the proceedings to state that on 13 October 2003,

the accused and his other counsel, who did not speak Tajik, had the opportunity to study all case file documents, most of which were in Tajik. Ashurov and both of his counsel repeatedly requested the court to allow them to study all case file materials, with the help of an interpreter. All requests were rejected. For unknown reasons, the judge then sought to exclude the Tajik-speaking counsel from further participation in the case, allegedly saying that it would not matter which of the two counsel represented him, because he "would be found guilty in any event". The judge acted in an accusatory manner and effectively replaced the passive and unprepared prosecutor. He followed the indictment verbatim and rejected all key arguments and requests of the defence. He asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court's secretary to record only those testimonies establishing Ashurov's guilt. Ashurov and both of his counsel three times moved for the court to step down but these motions were rejected.

2.9 At the trial, witnesses who had consistently before and during the first trial stated that they did not know or could not identify Ashurov as the perpetrator retracted their statements and implicated him in the crime. Although the defence team could not participate in the final hearing and Ashurov's guilt was not proven in the court, on 11 November 2003, he was convicted of armed robbery and was sentenced to 20 years' imprisonment.

2.10 During the second trial, the court was also partial and biased in evaluating facts and evidence in Ashurov's case. Contrary to what is stated in the judgment of 11 November 2003, neither Ashurov, nor Shoymardonov and Sulaymonov, were in Dushanbe on that day. All three were at that time serving prison terms in other countries. In addition to certificate No.005668, the defence team presented additional evidence, confirming that Ashurov was released from prison in Kyrgyzstan on 17 July 1999, i.e. more than two months *after* the armed robbery in Tajikistan occurred. The defence requested the court to examine two witnesses that could have confirmed that Ashurov was permanently at that prison from 5 August 1998 to 17 July 1999. The request was rejected, as the court held that Ashurov did not really serve the sentence there, that he managed to obtain a passport in Tajikistan on 30 December 1998, and flew from Dushanbe to Khudzhand between January and March 1999.

2.11 The defence team also requested additional interviews of the investigator and the MoI officers who subjected Ashurov to torture and a screening of video recording of 5 May 2002. This was rejected by the court. The court ignored the defence's documentary evidence and testimony of defence witnesses and based its judgment on Ashurov's coerced confession.

2.12 Ashurov's appeal to the Judicial College of the Supreme Court of 20 November 2003 and 29 January 2004 was dismissed on 10 February 2004.

2.13 On an unspecified date, and on appeal from Ashurov's counsel, the Deputy General Prosecutor initiated a review procedure before the Presidium of the Supreme Court, requesting the repeal of Ashurov's sentence. The counsel requested the Presidium of the Supreme Court to attend the consideration of the case, to present material evidence that had disappeared from the case file. Counsel did not receive a reply to his request. On 12 September 2004, the Presidium of the Supreme Court dismissed the Deputy General Prosecutor's request.

The complaint

3.1 The author claims that his son is a victim of violation of his rights under article 7 of the Covenant, as during the first three days following his detention, he was tortured by the MoI officers to make him confess, in violation of article 14, paragraph 3(g). All challenges to the voluntary character of the confessions he and counsel made in court were rejected.

3.2 The author further claims that article 9, paragraphs 1, 2 and 3, was violated in his son's case, as he was detained on 3 May 2002 without being informed of the reasons and the detention protocol was drawn up only on 5 May 2002. His pre-trial detention was endorsed by the public prosecutor and subsequently renewed by the latter on several occasions, except for the period from 31 August to 23 September 2003 when his placement into custody was without any legal basis.

3.3 Article 14, paragraph 1, is said to have been violated, because the judge presiding over the second trial conducted the trial in a biased manner, asked leading questions, instructed the court secretary to modify the trial's transcript against the truth and only partially evaluated facts and evidence.

3.4 Ashurov's presumption of innocence, protected by article 14, paragraph 2, was violated, because during the second trial on 13 October 2003, the presiding judge commented that "he would be found guilty in any event". That the main prosecutorial evidence – i.e. the match between the fingerprints collected at the crime scene and those of the author's son – had been forged by the expert upon pressure from the investigator, was recognized by the State party's authorities themselves in February 2004. Moreover, Ashurov was serving a sentence in Kyrgyzstan and his accomplice Shoyardonov was serving a prison term in Uzbekistan when the armed robbery occurred.

3.5 The author further claims that his son is a victim of a violation of article 14, paragraph 3(a). Being a native Uzbek speaker, he could not, during the pre-trial investigation, understand the indictment available only in Tajik language. Moreover, the first three days of the second trial were conducted in Tajik and without an interpreter, although neither Ashurov nor one of the two lawyers of the defence team mastered Tajik.

3.6 Article 14, paragraph 3(b), is said to have been violated, because Ashurov was deprived of his right to legal representation from the moment of arrest. Subsequently, he was *de facto* denied this right during the pre-trial investigation. During the second trial, Ashurov and his defence were only given 1-2 hours to study the case materials in the Tajik language, while the presiding judge sought to exclude the counsel who did speak Tajik from further participation in the case.

3.7 During the trial, the author's son and his counsel's motions for the examination of witnesses on his behalf were rejected by the court without any justification, contrary the guarantee of article 14, paragraph 3(e).

3.8 Finally, the author claims that the Judicial College of the Supreme Court refused to consider the defence's documentary evidence, thus not properly reviewing his son's conviction and sentence within the meaning of article 14, paragraph 5.

Absence of State party cooperation

4. By Notes Verbales of 20 January 2005, 15 February 2006 and 19 September 2006, the State party was requested to submit to the Committee information on the question of admissibility and the merits of the communication. The Committee notes that this information has still not been received. It regrets the State party's failure to provide any information with regard to the admissibility or the merits of the author's claims, and recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal.³³⁸ In the absence of any observations from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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 case is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies up to and including the Supreme Court have been exhausted. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

5.3 With regard to the author's allegation under article 14, paragraph 5, that his son's right to have his sentence reviewed by a higher tribunal according to law was violated, the Committee considers that the author has not substantiated this claim, for the purposes of

³³⁸ See, *inter alia*, Khomidova v. Tajikistan, Communication No.1117/2002, Views adopted on 29 July 2004; Khalilova v. Tajikistan, Communication No.973/2001, Views adopted on 30 March 2005; and Aliboeva v. Tajikistan, Communication No.985/2001, Views adopted on 18 October 2005.

admissibility. Hence, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 The Committee considers that the author's remaining claims have been sufficiently substantiated for purposes of admissibility, and declares them admissible.

Consideration of the merits

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

6.2 The Committee has taken note of the author's allegations that his son was beaten and subjected to torture by the MoI investigators, to make him confess, and that torture marks were visible on the video recoding of 5 May 2002. The author also brought the allegations of torture repeatedly and without success to the attention of the authorities. In the absence of any State party information, due weight must be given to the author's allegations. In light of the detailed and uncontested information provided by the author, the Committee concludes that the treatment that Olimzhon Ashurov was subjected to was in violation of article 7 of the Covenant.

6.3 As abovementioned acts were inflicted on Olimzhon Ashurov to force him to confess a crime for which he was subsequently sentenced to 20 years' imprisonment, the Committee concludes that the facts before it also disclose a violation of article 14, paragraph 3(g), of the Covenant.

6.4 The author has claimed that his son was arrested on 3 May 2002 without being informed of the reasons and the detention protocol was drawn up only on 5 May 2002. His pre-trial detention was prolonged by the public prosecutor on several occasions, except for the period from 31 August to 23 September 2003 when his preventive detention had no legal basis. The Committee notes that the matter was brought to the courts' attention and was rejected by them without explanation. The State party has not advanced any explanations in this respect. In the circumstances, the Committee considers that the facts before it disclose a violation of the author's son's rights under article 9, paragraphs 1 and 2, of the Covenant.

6.5 The Committee notes that the pre-trial detention of the author's son was approved by the public prosecutor in May 2002, and that there was no subsequent judicial review of the lawfulness of his detention until April 2003.³³⁹ The Committee recalls that article 9, paragraph 3, entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with.³⁴⁰ In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision.

6.6 The Committee notes the author's claim that the trial of his son was unfair, as the court was not impartial³⁴¹, and the judge presiding over the second trial conducted it in a biased manner, asked leading questions, gave instructions to modify the trial's transcript in an untruthful way and sought to exclude the Tajik-speaking lawyer from participation in the case. The Committee has noted the author's contention that his son's counsel requested the court, *inter alia*, properly to examine the torture claim; to allow the defence sufficient time to study the case file with the help of an interpreter; to instruct the investigative bodies to translate the indictment into Tajik; and to call witnesses on his behalf. The judge denied all requests without giving reason. On appeal, the Supreme Court did not address the claims either. In the present case, the facts presented by the author, which were not contested by the State party, show that the State party's courts acted in a biased and arbitrary manner with respect to the above mentioned complaints and did not offer Ashurov the minimum guarantees of article 14,

³³⁹ See paragraph 2.4 above.

³⁴⁰ *Kulomin v. Hungary*, Communication No. 521/1992, Views adopted on 22 March 1996, para. 11.3, *Platonov v. Russian Federation*, Communication No. 1218/2003, Views adopted on 1 November 2005, para. 7.2.

³⁴¹ See paragraphs 2.7 – 2.11 above.

paragraph 3 (a), (b) and (e). In the circumstances, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (a), (b) and (e), of the Covenant.

6.7 In relation to the author's claim that his son was not presumed innocent until proved guilty, the author has made detailed submissions which the State party has failed to address. In such circumstances, due weight must be given to the author's allegations. The author points to many circumstances which he claims demonstrate that his son did not benefit from the presumption of innocence.³⁴² The Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.³⁴³ The Committee also recalls its General Comment No.13, which reiterates that by reason of the principle of presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proven beyond reasonable doubt. From the uncontested information before the Committee, it transpires that the charges and evidence against the author's son left room for considerable doubt, while their evaluation by the State party's courts was in itself in violation of fair trial guarantees of article 14, paragraph 3. There is no information before the Committee that, despite their having been raised by Ashurov and his defence, these matters were taken into account either during the second trial or by the Supreme Court. In the absence of any explanation from the State party, these concerns give rise to reasonable doubts about the propriety of the author's son's conviction. From the material available to it, the Committee considers that Ashurov was not afforded the benefit of this doubt in the criminal proceedings against him. In the circumstances, the Committee concludes that his trial did not respect the principle of presumption of innocence, in violation of article 14, paragraph 2.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of the rights of the author's son under article 7; article 9, paragraphs 1, 2 and 3; and article 14, paragraphs 1, 2, 3 (a), (b), (e) and (g), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, i.e. immediate release, appropriate compensation, or, if required, the revision of the trial with all the guarantees enshrined in the Covenant, as well as adequate reparation. The State party is under an obligation to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, Tajikistan has recognised 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 recognised in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive, within ninety days, information from the State party about the measures taken to give effect to the Committee's Views. The State party is requested also to give wide publicity to 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.]

³⁴² See paragraphs 2.3, 2.5, 2.8 – 2.9 above.

³⁴³ *Romanov v. Ukraine*, Communication No.842/1998, inadmissibility decision of 30 October 2003; *Arutyuniantz v. Uzbekistan*, Communication No.971/2001, Views adopted on 30 March 2005, para. 6.5.



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13 – 31 March 2006

VIEWS

Communication No. 1044/2002

<u>Submitted by:</u>	Davlatbibi Shukurova (not represented by counsel)
<u>Alleged victims:</u>	The author's husband Dovud and his brother Sherali Nazriev (deceased)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	26 December 2001(initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 9 January 2002 (not issued in document form)
<u>Date of adoption of Views:</u>	17 March 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Torture, unfair trial, unlawful detention.

Substantive issues: Death sentence pronounced and executed after unfair trial.

Procedural issues: Level of substantiation of claim.

Articles of the Covenant: 2, paragraph 3; 6; 7; 9; 14 paragraphs 1, 3 (b), (d), (e), (f), (g), and (5).

Article of the Optional Protocol: 2

On 17 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1044/2002. The text of the Views is appended to the present document.

[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

Eighty-sixth session

concerning

Communication No. 1044/2002*

Submitted by: Davlatbibi Shukurova (not represented by counsel)

Alleged victims: The author's husband Dovud and his brother Sherali Nazriev, deceased

State party: Tajikistan

Date of communication: 26 December 2001(initial submission)

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

Meeting on 17 March 2006,

Having concluded its consideration of communication No. 1044/2002, submitted to the Human Rights Committee by Davlatbibi Shukurova 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

1.1 The author of the communication is Davlatbibi Shukurova, a Tajik national born in 1973. She submits the communication on behalf of her husband, Dovud Nazriev, and on behalf of his brother, Sherali Nazriev, both deceased, who, at the time of submission of the communication, were awaiting execution following a death sentence pronounced by the Supreme Court on 11 May 2000. She claims that the brothers are victims of violation by Tajikistan, of their rights under articles 6; 7; 9; and 14, paragraphs 1, 3 (b), (d), (e), (f), (g), and 5, of the Covenant³⁴⁴. The communication also appears to raise issues under article 7 in relation to the author herself. She is not represented.

1.2 On 9 January 2002, pursuant to rule 92 (old 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the execution of the brothers while their case is being examined by the Committee. This request was reiterated on 1, 9, and 10 July 2002. On 23 July 2002, the author informed that her husband and his brother were executed on 11 July 2002.

Factual background

2.1 On 16 February 2000, at around 5 p.m. a remote-controlled bomb exploded in the centre of Dushanbe. The target of the explosion was the Mayor of Dushanbe. The Mayor was injured, while the Deputy-Minister of Security, who was standing next to him, was killed.

2.2 Sherali Nazriev was interrogated in relation to the bombing on 19 February 2000 as a suspect. He was arrested immediately after the interrogation, and on 25 February 2000, he was charged with the bombing. On 25 April 2000, the author's husband, Dovud, was called for interrogation to the Ministry of Security; he was arrested the same day. He was allegedly detained in the basement of the Ministry of Security until 28 May 2000, when he was transferred to an Investigation Detention Centre (SIZO). His arrest was allegedly authorized by a prosecutor only on 29 May 2000, and he was charged with the bombing the same day.

2.3 The brothers were allegedly tortured to force them to confess guilt during the month following their arrests. The author contends that the acts of torture included beatings and kicks with batons. The brothers were hung up and were administered kicks to their kidneys. Under torture, they confessed in writing to having committed the bombing. Sherali, as a security guard in the Mayor's Office, was accused of placing the explosive in the Mayor's car, and Dovud, who was allegedly standing nearby, activated the bomb when the Mayor and the deputy Minister went to the car. Allegedly, shortly after their confessions, the investigators began placing cords, soap, and razor blades in their cells, to incite them to commit suicide.

2.4 The author claims that the brothers' relatives were given no information about their whereabouts for several months, and they were not allowed to visit them or to send parcels to them. Allegedly, she saw her husband only in July 2000, during a confrontation in the investigator's office; she was allowed to meet "officially" with him only in September 2000.

2.5 Allegedly, while detained in the premises of the Ministry of Security, Dovud was not allowed to be represented by a lawyer. As Sherali was not provided with a State-appointed lawyer, his family hired a private lawyer in March 2000, but he was allowed to see him only in August 2000; even then, the lawyer was allegedly prevented from meeting with his client in private.

2.6 The case was heard by the Military Chamber of the Supreme Court³⁴⁵ (sitting in first instance), from 26 March to 11 May 2001. On 11 May 2001, the Military Chamber of the Supreme Court sentenced the brothers to death. According to the author, the trial was biased and not objective. In particular:

- (a) One of the judges was not an ethnic Tajik and allegedly could not speak Tajik properly; but he was not provided with an interpreter.

³⁴⁴ The Covenant and the Optional Protocol entered into force for the State party on 4 April 1999.³⁴⁵ The trial was held before the Military Chamber of the Court, as Sherali Nazriev was a military officer.

³⁴⁵ The trial was held before the Military Chamber of the Court, as Sherali Nazriev was a military officer.

(b) In court, the brothers retracted their confessions, objecting that they had been signed under duress. According to the author, Sherali had no possibility to place the bomb in the car, because it was parked in front of the entrance to the Mayor's Office, and many people were passing there, while on the day of the crime Dovud was sick and stayed at home.

(c) Most of the brothers' requests to call defence witnesses, including an alibi witness for Dovud, were rejected by the court.

(d) Sherali's guilt was partly based on the conclusions of an expert who had examined his clothes. The author notes that the arrest was on 19 February 2000, but that the clothes were only examined in August 2000.

2.7 On 13 November 2001, the Criminal Chamber of the Supreme Court, acting as an appellate body, upheld the judgment of the Military Chamber of 11 May 2000.

The complaint

3. The author claims that the facts set out above amount to a violation of the rights of Sherali and Dovud Nazriev under articles 6; 7; 9; and 14, paragraphs 1, 3 (b), (d), (e), (f), (g), and 5 of the Covenant. Although the author does not specifically invoke article 7 in her own respect, the communication also appears to raise issues under this provision.

State party's observations on admissibility and merits

4.1 The State party presented comments on 9 July 2002, without however addressing the Committee's request for interim measures for protection. It states that the brothers were sentenced to death for a serious terrorist act. To achieve their plan and objectives, they acted on a preliminary agreement with an unidentified person. Sherali joined the police and became a security guard in the Municipality of Dushanbe. On 16 February 2000, during lunch break, he placed a bomb in the Mayor's car and informed his brother. Dovud observed the car and when the Mayor came in, accompanied by the deputy Minister of Internal Affairs, detonated the bomb.

4.2 The court found the brothers guilty of other crimes as well, e.g. fraud committed in 1999 (illegal transfer of property of a car). Sherali was sentenced for unlawfully crossing of the Tajik-Afghan border in 1995, Dovud for dissemination of 4000 counterfeit US dollars and for participation in a robbery in 1999.

4.3 According to the State party, the brothers' guilt was fully established on the basis of their confessions, on the basis of witness testimony in court and depositions during the preliminary investigation, as well as on the basis of records of the examination of the crime scene, evidence seized, conclusions of forensic experts, and other evidence examined by the court.

4.4 The State party recalls that an arrest warrant against Dovud was issued on 24 May 2000. He was served the order on 29 May 2000; the same day he refused, in writing, to avail himself of the services of a lawyer. Subsequently, before being charged with particularly serious crimes, he was given an ex-officio lawyer. Sherali was arrested on 17 February 2000. During his interrogation, he was informed of his right to be represented by a lawyer but did not request one. Notwithstanding, a lawyer was assigned to him on 19 March 2000. According to the State party, the case file does not contain any record indicating that any of the above lawyers has ever complained about a refusal to meet with their clients.

4.5 The State party rejects as unfounded the author's allegations of the use of torture during preliminary investigation, arguing that the criminal case file does not contain any complaints about any beatings.

4.6 The author's allegations about the bias and partiality of the trial are rejected as groundless by the State party, because the trial was public and took place in the presence of lawyers, relatives of the accused and other individuals.

4.7 The allegation about the insufficient knowledge of Tajik by one of the court's judges is also dismissed, as the person in question adequately mastered the language. In addition, the lawyers for the Nazriev brothers did not object in court about this.

4.8 As to the alibi defence presented by Dovud, the State party notes that this was verified and dismissed during the preliminary investigation. In court, neither Dovud nor his lawyer produced documents that would buttress his alibi defence.

4.9 The State party affirms that the Military Chamber of the Supreme Court had initially sent back the case for "additional investigation", and that subsequently it decided to re-open the proceedings, and interrogated additional witnesses, listened to the pleadings of the prosecution and the lawyers. The judgment was pronounced in accordance with the requirements of the Criminal Procedure Code then into force.

4.10 The State party affirms that the author's allegations were all examined and dismissed on cassation.

Author's comments

5.1 On 1 September 2002, the author explained that upon registration of the case by the Committee, the State party's authorities (Presidential Office) requested the Ministry of Interior, the Prosecutor's Office, and the Supreme Court to postpone the execution of the brothers for a period of 6 months, until 10 July 2002. On 24 June 2002, the prison authorities refused to accept her parcels in SIZO No 1 Detention Centre in Dushanbe, affirming that the brothers had been transferred to the city of Kurgan-Tyube. The author tried to locate them, but the authorities did not reply to her queries, claiming that they had no relevant information. On 23 July 2002, a relative of her husband obtained two death certificates from the Dushanbe Municipality, establishing that the brothers had been executed by firing squad already on 11 July 2002.

5.2 The author recalls that Sherali's arrest in February 2000 for illegal border crossing was a cover-up designed to extract information on the bombing from him in the absence of a lawyer. She refers to article 51 of the Criminal Procedure Code, which states that where a suspect faces the death penalty, legal representation is compulsory from the moment of the indictment.

5.3 The author notes that the State party has not provided any explanation about the grounds of her husband's detention from 25 April to 24 May 2000, and adds that her husband's detention during this period could be confirmed by family members, friends, and relatives, who saw him leaving for his interrogation in the Ministry of Security and never coming back.

5.4 According to her, the brothers' lawyers had requested repeatedly to see their clients, but their requests were mostly rejected under different pretexts. The practice in Tajikistan is that a lawyer will orally request an investigator to allow him to meet his/her client; when the request is rejected, no ground is given. Such refusals are said to constitute a common practice. The author affirms that during the trial, her husband's and his brother's lawyers both complained about the limited access to their clients. The presiding judge apparently ignored these claims.

5.5 The author reaffirms that her husband and his brother were subjected to multiple acts of torture, and that their relatives were not allowed to visit them for a long period to presumably prevent them seeing the marks of torture; in court, the brothers had claimed that they were tortured, but this was ignored.

5.6 Finally, the author affirms that the court concluded that the brothers had entered into a "preliminary agreement with an unidentified person" who allegedly paid them 30 000 US dollars prior to the attack, and promised to pay an additional 100 000 US dollars upon completion. She argues that the family had always lived with limited financial means, and that neither the investigation nor the court found any money. She contends that the fact that the person who masterminded the crime was not identified during the investigation nor by the court shows that crucial elements and evidence of the case have not been established. This, according to the author, illustrates the bias and partiality both of the preliminary investigation, and the court.

Issues and proceedings before the Committee

Breach of the Optional Protocol

6.1 The author affirms that the State party has breached its obligations under the Optional Protocol by executing her husband and his brother despite the fact that their communication had been registered under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls³⁴⁶ that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith, so as to enable it to consider such communications, and after examination to forward its Views to the State party and to the individual (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

6.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her husband was denied rights under articles 6, 7, 9, 10 and 14 of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol by executing the alleged victims before the Committee concluded consideration and examination of the case, and the formulation and communication of its Views. It is particularly inexcusable for the State to have done so after the Committee acted under rule 92 of its Rules of Procedure, and in spite of several reminders addressed to the State party to this effect.

6.3 The Committee recalls that interim measures pursuant to rule 92 of the Committee's Rules of Procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the execution of Dovud and Sherali Nazriev, undermines the protection of Covenant rights through the Optional Protocol³⁴⁷.

Examination of admissibility

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

7.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2 (a), of the Optional Protocol.

7.3 The Committee has noted the author's claim under article 14, paragraph 3 (e), that several witnesses for Dovud Nazriev were not examined in court. The State party has contended that this allegation was duly examined during the preliminary investigation and was found to be groundless, and that the court dismissed Dovud's defence alibi as neither he nor his lawyer had provided any documents that would corroborate this alibi. The Committee notes that the above claim relates to the evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice³⁴⁸. On the information before it, the Committee considers that the author has failed to substantiate sufficiently that her husband and his brother's trial in the

³⁴⁶ See *Piandiong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000, paragraphs 5.1 to 5.4.

³⁴⁷ See, *Saidov v. Uzbekistan*, Communication No. 964/2001, Views adopted on 8 July 2004.³⁴⁸ See Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.³⁴⁹ See General comment No. 20 (on article 7), forty-fourth session (1992), para. 14.

³⁴⁸ See Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.³⁴⁹ See General comment No. 20 (on article 7), forty-fourth session (1992), para. 14.

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case suffered from such defects. Accordingly, this claim is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee takes note of the author's allegation under article 14, paragraph 3 (f), as one judge did not sufficiently master the Tajik language. The State party has explained that the judge in question did adequately master the language, and that neither the alleged victims nor their lawyers ever raised the issue in court; this affirmation is unchallenged by the author. In the circumstances, the Committee considers that the author did not exhaust available domestic remedies, and this part of the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.5 The Committee has also noted the un-refuted claim that Dovud and Sherali Nazriev's rights under article 14, paragraph 5, of the Covenant were violated. It recalls that appeal on cassation was examined on 13 November 2001 by the Criminal Chamber of the Supreme Court, acting as an appellate body of the Military Chamber, and that the composition of the appellate body was different from the initial composition of the Military Chamber. In the absence of other information in this respect, the Committee considers that the author has failed to substantiate sufficiently this claim, for purposes of admissibility. This part of the communication is thus inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the author's remaining claims are sufficiently substantiated, for purposes of admissibility.

Examination of the merits

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

8.2 The author claims that her husband and his brother were beaten and subjected to torture by investigators during the early stages of their detention, thus forcing them to confess guilt in the bombing; she provides details on the methods of torture used (paras 2.3 and 2.4 above). She contends that these allegations were raised in court but were ignored. The State party merely argues that the case file does not contain complaints about mistreatment. The Committee observes that the decision of the Supreme Court's Appellate Chamber also does not address the issue. In the absence of other pertinent information in this regard, due weight must be given to the author's claims. The Committee recalls that it is essential that complaints about torture must be investigated promptly and impartially by competent authorities³⁴⁹. In the present case, no substantive refutation was made by the State party in this regard, and the Committee concludes that the treatment Dovud and Sherali Nazriev were subjected to amounts to a violation of article 7, read together with articles 14, paragraph 1 and 2, paragraph 3, of the Covenant.

8.3 In light of the above, the Committee concludes that Dovud and Sherali Nazriev's right under article 14, paragraph 3 (g), was also violated, as they were compelled to confess guilt to a crime.

8.4 The author contends that her husband was arrested on 25 April 2000 and kept in premises of the Ministry of Security until 28 May, without contact with the outside world; his arrest was endorsed by a prosecutor only on 29 May 2000, i.e. 34 days after arrest. The State party notes that an arrest warrant against Dovud was issued on 25 May 2000 and that he was indicted on 29 May 2000. In its reply, the State party has in fact not refuted the claim of unlawful detention of Dovud Nazriev for 34 days. In the circumstances of the case, the Committee concludes that Dovud Nazriev's right under article 9, paragraph 1, was violated.

8.5 On the claim that Dovud and Sherali Nazriev were unrepresented for a long period, and that once they were legally represented, their lawyers were prevented from meeting with them, the State party affirms that when Dovud was indicted on 29 May 2000, he waived his right to be represented; when he was charged with serious crimes, he was given an ex-officio lawyer; Sherali did not request to be represented upon arrest, but was assigned a lawyer on 19 March 2000, when charged with serious crimes. The Committee recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a

³⁴⁹ See General comment No. 20 (on article 7), forty-fourth session (1992), para. 14.

lawyer³⁵⁰ at all stages of the proceedings. It concludes that in the circumstances of the present case, the material before it reveals a violation of the author's husband's and his brother's rights under article 14, paragraph 3 (b), and (d), of the Covenant, in that they were not provided with the opportunity adequately to prepare their defence, and were not legally represented at the initial stage of the investigation.

8.6 The Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant³⁵¹. In the current case, the death sentences were passed and executed, in violation of the right to a fair trial, as guaranteed by article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

8.7 The Committee finally notes the author's claim that the authorities did not inform her about her husband's and his brother's execution until 23 July 2002. The law in force in the State party still does not allow for the family of an individual under sentence of death to be informed either of the date of execution or the location of the burial site of the executed individual. The Committee understands the continued anguish and mental stress caused to the author, as the wife of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' failure to notify the author of the execution of her husband and of her brother in law, and the failure to inform her of their burial places, amounts to inhuman treatment of the author, contrary to article 7³⁵².

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation

(a) of articles 6; 7; 9, paragraph 1; and 14, paragraphs 1 and 3 (b), (d), and (g) , of the Covenant in relation to Dovud and Sherali Nazriev, and

(b) of article 7 in relation to the author herself.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mrs. Shukurova with an effective remedy, including appropriate compensation, and to disclose to her the burial site of her husband and her husband's brother. The State party is also under an obligation to prevent similar violations in the future.

11. 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 90 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.]

³⁵⁰ See, for example, *Aliiev v. Ukraine*, Communication No. 781/1997, Views adopted on 7 August 2003, paragraph 7.3.

³⁵¹ See, for example, *Kurbanov v. Tajikistan*, Communication No. 1096/2002, Views adopted on 6 November 2003, paragraph 7.7 ³⁵² See, for example, *Aliboev v. Tajikistan*, Communication No. 985/2001, Views adopted on 18 October 2005, paragraph 6.7.

³⁵² See, for example, *Aliboev v. Tajikistan*, Communication No. 985/2001, Views adopted on 18 October 2005, paragraph 6.7.

**International covenant
on civil and
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Eighty-sixth session
13 - 31 March 2006**VIEWS****Communication No. 1208/2003**

<u>Submitted by:</u>	Bakhrudin Kurbonov (not represented by counsel)
<u>Alleged victim:</u>	Dzhaloliddin Kurbonov, the author's son
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	17 June 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 October 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	16 March 2006

GE.06-41331

* Made public by decision of the Human Rights Committee.

Subject matter: Torture, unfair trial

Substantive issues: Level of substantiation of claim

Procedural issues: Failure of State party to cooperate

Articles of the Covenant: 7, 9, 10, 14 (1) and (3) (e) and (g)

Articles of the Optional Protocol: 2

On 16 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1208/2003. The text of the Views is appended to the present document.

[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

eighty-sixth session

concerning

Communication No. 1208/2003*

Submitted by: Bakhridin Kurbonov (not represented by
counsel)

Alleged victim: Dzhaloliddin Kurbonov, the author's son

State party: Tajikistan

Date of communication: 17 June 2003 (initial submission)

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

Meeting on 16 March 2006

Having concluded its consideration of communication No. 1208/2003, submitted
to the Human Rights Committee by Bakhridin Kurbonov 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:

* The following members of the Committee participated in the examination of the present communication:
Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet,
Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr.
Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley,
Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

1. The author is Mr. Bakhrudin Kurbonov, a Tajik national born in 1941, who submits the communication on behalf of his son, Dzhaloliddin Kurbonov, also a Tajik, born in 1975, at present imprisoned in Dushanbe. He claims that his son is a victim of violation by Tajikistan of his rights under articles 7; 9, paragraphs 1 and 2; 10; and 14, paragraphs 1 and 3 (e) and (g), of the International Covenant on Civil and Political Rights. He is not represented by counsel.

Factual background

2.1 On 15 January 2001, the author's son was arrested and brought to the Operational Search Unit, Criminal Investigation Department, Ministry of Internal Affairs. The police officers allegedly intended to force him to confess guilt in the murder of two policemen. When they were unable to implicate him in the murder, they accused him of committing three robberies. He was detained until 6 February 2001, and allegedly spent 15 days handcuffed to the radiators in police offices. During this time he allegedly was systematically subjected to torture, in form of beatings and electric shocks. He was told that if he did not confess guilt, his relatives would experience "serious problems" and would be "tortured"; indeed, at one stage he learned that one of his brothers had been arrested, although he was subsequently released. The author's son did not confess, however, and was released on 6 February 2001.

2.2 The author complained about his son's mistreatment to the Prosecutor's Office and to the Ministry of Internal Affairs, following which an investigation was launched, and the policemen responsible were subjected to disciplinary measures and prosecuted. The author presents a copy of an order signed by the Deputy Minister of Internal Affairs on 10 May 2001, on the disciplining of five police officers in this regard (for "unfounded arrest and bringing to the Criminal Search Department", "unlawful detention", "unlawful search"). From this document, it transpires that the author's son was detained on 15 January and was obliged, "under pressure", to confess his participation in three robberies that took place in 1996-98. Criminal charges against him were filed only on 31 January 2001; the case was closed for lack of evidence on 28 February 2001. According to the order, no registry book existed for individuals brought to the premises of the Criminal Search Department and no record of the author's son's detention was produced, in violation of the requirements of the State party's Criminal Code.

2.3 However, the police officers who had previously tortured his son, thereafter, and together with other policemen, began to intimidate the author, his son and their family. On 15 August 2001, one of the author's nephews was beaten; on 31 August, the author's brother and father were beaten up by 12 policemen, some of whom were masked; on 16 September, the author and another of his sons were beaten by policemen during an unlawful search of their home. On 15 October 2001, the author's two sons were both severely beaten by policemen and sustained head injuries (a copy of a forensic medical examination of 18 October 2001 is provided; according to the conclusion of the expert, their injuries could have been the result of blows with a blunt object). Allegedly, these acts were designed to make the author withdraw his complaints against the police officers concerned. However, the author refused to do so.

2.4 On 28 November 2002, the author's son was again arrested in connection with the three robberies. He allegedly was again subjected to torture, and this time he was unable to withstand it, he confessed to the robberies as requested by the police. It was stressed that if he did not stand by his confession, the police would shoot him, on the pretext of preventing his escape. The author notes that his son was not provided with a lawyer until mid December 2002.

2.5 On 7 April 2003, the Criminal Chamber of the Supreme Court, acting as a first instance jurisdiction, found the author's son guilty of the robberies and sentenced him to nine years' imprisonment. The author submits that the trial was unfair and biased. Defence witnesses were not examined in court. The author's son retracted his confession obtained under torture during the preliminary investigation, but the court considered that this was a defence strategy and dismissed his claim of torture on the grounds that (a) the policeman said to be responsible denied in court that he had committed torture, and (b) because during the trial, the author's son "did not present (to the court) any unquestionable evidence that he was beaten by [these] police officers"; it also refused to take into account the fact that the police officers were disciplined for the unlawful and

groundless detention of the author's son with use of illicit methods against him, declaring that the signature on the copy of the deputy Minister of Interior's Order was illegible. An appeal to the Supreme Court's Appellate Chamber was dismissed on 3 June 2003, without examining the claims of torture and the reversal of the burden of proof, in the first instance judgement of 7 April 2003.

The complaint

3.1 The author claims that his son was subjected to torture and forced to provide a confession, in violation of articles 7 and 14, paragraph 3 (g), of the Covenant.

3.2 According to him, his son's rights under article 9, paragraphs 1 and 2, were violated, because his son was detained unlawfully, and for a prolonged period he was not formally charged with any offence.

3.3 The author claims that, by being subjected to threats that his family would face "serious problems" and would be "tortured", his son suffered treatment incompatible with the State party's obligations under article 10 of the Covenant.

3.4 Finally, it is submitted that the trial court in Kurbonov's case was not impartial, in violation of article 14, paragraph 1, and its refusal to allow him to examine certain witnesses gave rise to a violation of article 14, paragraph 3 (e), of the Covenant.

State party's failure to cooperate

4. By Notes Verbales of 22 October 2003, 22 November 2005, and 12 December 2005, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2 (a), of the Optional Protocol.

5.3 In relation to the author's claim under article 14, paragraph 3 (e), of the Covenant, that his son was denied the right to have certain witnesses on his behalf examined in court, the Committee notes that the author has neither provided the identity of such potential witnesses, nor explained the relevance of their possible statements; furthermore, no explanation was given as to why the court considered they did not need to be examined. In the circumstances, the Committee considers that the author has failed sufficiently to substantiate this claim, for purposes of admissibility. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 The Committee considers that the author's remaining claims under articles 7; 9, 10; and 14, paragraphs 1 and 3 (g), of the Covenant, to be sufficiently substantiated for purposes of admissibility, and proceeds to their consideration on the merits.

Consideration of the merits

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

6.2 The author has claimed that in January and November/December 2001, while in detention, his son was beaten and subjected to torture, by policemen, to force him to confess guilt in different crimes. Following the author's complaint about his son's unlawful detention, beatings and torture sustained in January 2001, the deputy Minister of Interior disciplined those responsible. In reprisal, the author and his family were pressured by police officers to revoke their claims in this regard, and were beaten and intimidated on several occasions; his son was also beaten during a wedding in October 2001, which was confirmed by a forensic medical certificate.

6.3 In court, the author's son retracted his confession because it had been obtained under torture. On 7 April 2003, the Criminal Chamber of the Supreme Court dismissed his claim on the ground that in court, the policemen suspected of having tortured him denied any wrongdoing, and because the author's son "did not present to the court any unquestionable evidence that he was beaten by [the] police officers". The court did not take into account that those policemen were cautioned afterwards for their unlawful acts (paragraph 2.2 above), holding that the signature on the copy of the order confirming their sanctions was illegible. On appeal, the court did not address these claims. The Committee notes that the above claims relate primarily to the evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice.³⁵³ In the present case, the facts presented by the author clearly demonstrate that the Supreme Court acted in a biased and arbitrary manner with respect to the complaints related to the author's son's torture during the preliminary detention, because of the summary and unreasoned rejection of the evidence, properly and clearly documented by the author, that he had been tortured. In their effect, the action of the courts placed the burden of proof on the author, whereas the general principle is that the burden of proof that the confession was made without duress is on the prosecution. The Committee concludes that the treatment of Mr. Kurbonov during his preliminary detention, and the manner the courts addressed his subsequent claims to this effect, amounts to a violation of article 7 and of article 14, paragraph 1, of the Covenant. In light of this finding, the Committee considers unnecessary separately to examine the claim made under article 10.

6.4 In light of the above finding, the Committee concludes that the author's son's rights under article 14, paragraph 3 (g), have also been violated, as he was compelled to confess guilt to a crime.

6.5 The author has further claimed that his son was unlawfully arrested on 15 January 2001 and released on 6 February 2001, after 21 days of detention without having either his arrest or detention registered, nor having been promptly informed of the charges against him. An "official" criminal charge against him for robbery was only filed on 31 January 2001, and was subsequently dismissed on 28 February 2001 because of lack of evidence. The Committee also recalls that police officers were disciplined for having brought the author's son unlawfully to the Criminal Search Department of the Ministry of Interior, having groundlessly detained him there for 21 days without official record, and having opened a groundless criminal case against him. In the circumstances, the Committee considers that the facts before it disclose a violation of the author's son's rights under article 9, paragraphs 1 and 2, of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; and 14, paragraphs 1 and 3 (g), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Kurbonov with an effective remedy, which should

³⁵³ See Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

include a retrial with the guarantees enshrined in the Covenant or immediate release, as well as adequate reparation. The State party is also under an obligation to prevent similar violations in the future.

9. 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 90 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.]



**International covenant
on civil and
political rights**

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CCPR/C/85/D/1042/2001
16 November 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 1042/2001

<u>Submitted by:</u>	Abdulkarim Boimurodov (not represented by counsel)
<u>Alleged victim:</u>	Mustafakul Boimurodov (author's son)
<u>State Party:</u>	Tajikistan
<u>Date of communication:</u>	26 December 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92 decision, transmitted to the State party on 26 December 2001 (not issued in document form)
<u>Date of adoption of Views:</u>	20 October 2005

-
- Made public by decision of the Human Rights Committee.

Subject matter: Death sentence after unfair trial, torture

Substantive issues: Degree of substantiation of claims, adequacy of State party response

Procedural issues: None

Articles of the Covenant: 6, 7, 9(1), (2), 14(1), 3(a),(b),(d) and (g)

Articles of the Optional Protocol: 2

On 20 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1042/2001. The text of the Views is appended to the present document.

[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

Eighty-fifth session

concerning

Communication No. 1042/2001**

Submitted by: Abdulkarim Boimurodov (not represented by counsel)

Alleged victim: Mustafakul Boimurodov (author's son)

State Party: Tajikistan³⁵⁴

Date of communication: 24 September 2001 (initial submission)

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

Meeting on 20 October 2005,

Having concluded its consideration of communication No. 1042/2001, submitted to the Human Rights Committee on behalf of Mustafakul Boimurodov 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. The author is Abdulkarim Boimurodov, a Tajik citizen born in 1955. He submits the communication on behalf of his son, Mustafakul Boimurodov, also a Tajik citizen, born in 1976, currently imprisoned in Dushanbe, Tajikistan. He claims that his son is a victim of violations by Tajikistan of articles 6; 7; 9 paragraphs 1 and 2; and 14 paragraphs 1, 3(a),(b),(d) and (g), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 9, paragraph 3. He is not represented by counsel.

Factual background

2.1 On the evening of 10 October 2000, policemen came to the author's apartment, where he lived with his son, and without presenting any search or arrest warrant, searched the premises and arrested his son. From 10 October until 1 November 2000, the author's son was detained at a temporary detention centre, and was then moved to an investigation detention centre. For a total of 40 days he was held incommunicado; during this period none of his relatives knew where he was, and he had no access to a lawyer.

2.2 From the first day of his arrest, the author's son was allegedly tortured by policemen from various departments, in order to force him to confess to charges of terrorism. The torture consisted of beatings with a truncheon, a pistol handle, and a metal pipe on all parts of the body. Several toenails were pulled out with pliers. His son sought medical assistance on 1 and

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlé Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

³⁵⁴ The Covenant and the Optional Protocol entered into force in relation to Tajikistan on 4 April 1999.

8 November 2000, and 2 April 2001; the medical history file states that he had sustained cranial trauma, but other injuries sustained as a result of the torture are not recorded, such as the fact that he was missing nails on several toes. Several officers were subsequently charged in relation to their mistreatment of the author's son, but none were prosecuted, and all those involved continue to work as policemen.

2.3 Unable to withstand the torture, the author's son confessed to the charges against him, which related to his alleged involvement in 10 incidents of terrorism, which involved the following offences: participation in terrorist acts, murder, attempted murder, and unlawful possession and preparation of explosives. It transpires that charges were pressed only in relation to three incidents of terrorism: these related to an explosion at a Korean missionary centre on 1 October 2000, as a result of which 9 people died; an explosion at the home of the ex-wife of the author's son on 10 October 2000, which severely injured her and killed another person; and an explosion at a shop. The author notes that the fact his son confessed to charges relating to all 10 incidents, even those in respect of which charges were not prosecuted at trial, indicates that his confession was forced.

2.4 At his son's trial in the Supreme Court in March 2001, the presiding judge was allegedly biased in favour of the prosecution, interrupting the testimony of the accused and his witnesses when they did not say what the authorities wanted them to say. Initially, the judge did not want certain defence witnesses to testify; only on the insistence of his son's lawyer was their testimony heard. In relation to the bombing of the Korean missionary centre, these witnesses gave evidence confirming the alibi of the author's son for the time of the explosion. However, the presiding judge discarded these witnesses' evidence, on the basis that they were neighbours and relatives of the accused; the judge instead relied on testimony of prosecution witnesses who said they had seen the author's son at the scene of the crime. One prosecution witness who said he was unsure whether he had seen the author at the scene was subsequently 'threatened' by the judge; this witness later changed his testimony and confirmed that he had indeed seen the author's son at the missionary centre at the time in question. Regarding the bombing of the apartment of the author's former daughter-in-law, the author claims that the court did not properly investigate alternative versions of the bombing.

2.5 The court relied on prosecution evidence regarding an explosive substance discovered in the author's apartment, which was identified by the authorities as 73.5 grams of ammonal. However, as the author explained to the judge, he himself had bought the substance, thinking it was sulphur. He further states that, because there are no experts in explosives in Tajikistan, he doubts whether the substance was formally analysed at all.

2.6 During the trial, his son retracted his confession, told the judge it was given under torture, and even named those who abused him. He also complained that the search of the apartment had been conducted illegally, and that he had not had any access to family or a lawyer for 40 days. On 13 July 2001, despite these arguments, his son was found guilty of involvement in all three terrorist acts and sentenced to death. On 12 October 2001, his appeal to the appellate instance of the Supreme Court was partially upheld; his conviction on charges relating to the bombing of the shop was set aside for lack of evidence. However, his conviction for the other two terrorist attacks was confirmed, as was the death sentence.

2.7 The author requested the Committee to intervene to prevent his son's execution. On 26 December 2001, the Committee, acting through its Special Rapporteur, requested the State party not to carry out the execution of the author's son pending the Committee's consideration of the communication. Although the State party did not respond to this request, it transpired from a subsequent submission by the author (1 September 2002) that by decision of the Presidium of the Supreme Court of 20 June 2002, his son's death sentence was commuted to 25 years of imprisonment.

The complaint

3. The author claims that his son's arrest, trial and ill-treatment whilst in custody gives rise to violations of articles 6, 7, 9, paragraphs 1 and 2, and 14 paragraphs 1, 3(a),(b),(d) and (g) of the Covenant.

The state party's observations on admissibility and merits

4.1 By note of 5 March 2002, the State party submitted that the author's son, a student at the Islamic University, was arrested and charged in connection with a series of bomb blasts in

Dushanbe. Specifically, he was charged with conspiring and attempting to kill his ex-wife in a bomb blast, caused by a device installed in a cassette player. The blast severely injured the woman and killed another person. On 11 October 2000, explosives and detonators were found in the apartment where the author's son lived. In the course of the investigation, he confessed to having prepared the explosive device, together with two accomplices. He was tried in the Supreme Court and found guilty of terrorist acts, murder, attempted murder, and unlawful possession and preparation of explosives, and was sentenced to death. However, as a result of an appeal, his sentence was changed.

4.2 The State party notes that the General Procurator had opened an investigation in the course of which the participation of Mr Boimurodov in the explosions would again be reviewed.

Author's comments on the State party's submissions

5.1 In his comments on the State party's submission dated 1 September 2002, the author clarifies that on 12 October 2001, his son's conviction was altered on appeal by the Supreme Court only in relation to his alleged involvement in the bombing of the shop; in this regard his conviction was overturned. However, his conviction in relation to the other two bombings, and the sentence of death, stood.

5.2 The author states that on 20 June 2002, the Presidium of the Supreme Court decided to overturn his son's conviction in relation to the bombing at the Korean missionary centre, and to refer the matter back for further investigation. It transpires that the General Procurator filed a protest with the Court, in light of another person's confession to involvement in that bombing. The conviction in relation to the bombing at the ex-wife's apartment was confirmed but the death sentence against his son was commuted to 25 years imprisonment.

5.3 The author contends that the allegations about his son's torture and unfair trial have not been answered by the State party, and that his son has still not been provided with an effective remedy in relation to the violations of the Covenant of which he was a victim.

5.4 On 16 January 2004, the author states that the further investigation ordered by the Presidium of the Supreme Court on 20 June 2002 had still not been completed, which, according to the author, constitutes a violation of his son's right to a fair trial without undue delay.³⁵⁵

Issues and proceedings before the Committee

6.1 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 case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 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, in view of the commutation of Mr Boimurodov's death sentence in 2002, there is no longer any factual basis for the claim under article 6 of the Covenant. Accordingly, this claim has not been substantiated, and is therefore inadmissible pursuant to article 2 of the Optional Protocol.

6.4 In relation to the author's claims under articles 9, paragraphs 1 and 2, and 14, paragraph 3(a), the Committee notes that the author has not alleged that his son was not informed of the charges against him upon arrest, but that no arrest warrant was presented. Further, there is no information before the Committee about how, when, or if at all the arrest of the author's son was sanctioned by the relevant authorities. In the absence of such information, the Committee considers that the author has failed sufficiently to substantiate these claims, and accordingly declares them inadmissible under article 2 of the Optional Protocol. However, the Committee considers that the facts before it also appear to raise issues under article 9, paragraph 3 of the Covenant; in that respect, the Committee considers the Communication to be admissible.

³⁵⁵ Given the stage this issue was raised by the author, the Committee decides not to deal with this claim.

6.5 In relation to the author's claims under article 14, paragraph 1, the Committee notes that the author challenges the Court's assessment of the testimony of defence and prosecution witnesses, as well as the analysis of material discovered in the author's apartment. The Committee recalls its jurisprudence that it is generally for the courts of States parties to the Covenant 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 justice.³⁵⁶ On the information before it, the Committee considers that the author has failed sufficiently to substantiate that his son's trial in the present case suffered from such defects. Accordingly, this claim is inadmissible under article 2 of the Optional Protocol.

6.6 In relation to the author's claim under article 14, paragraph 3(d), no information has been provided in substantiation of the claim that the author's son was in fact denied the right to legal assistance in the preparation of his defence at trial. Accordingly, this claim is also inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers there to be no impediment to the admissibility of the author's remaining claims under articles 7, 9, paragraph (3), and 14, paragraphs (3)(b) and (3)(g), and proceeds to consider them on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol. It notes that, whilst the State party has provided comments on the author's son's criminal case and conviction, including information about the commutation of the death sentence, it has not provided any information about the substance of the claims advanced by the author. The State party merely notes that Mr Boimurodov was tried and convicted for certain offences; it does not address the author's substantive allegations of Covenant violations.

7.2 In relation to the author's claims that his son's rights under articles 7 and 14, paragraph (3)(g) were violated by the State party, the Committee notes that the author has made detailed submissions which the State party has not addressed. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party should examine in good faith all allegations brought against it, and should provide the Committee with all relevant information at its disposal. The Committee does not consider that a general statement about the criminal proceedings in question meets this obligation. In such circumstances, due weight must be given to the author's allegations, to the extent that they have been properly substantiated. In light of the detailed information provided by the author to the effect that his son was subjected to severe pain and suffering at the hands of the State party's law enforcement officers, some of whom were subsequently charged in relation to this mistreatment, and in the absence of an explanation from the State party, the Committee considers that the case before it discloses a violation of articles 7 and 14, paragraph 3(g) of the Covenant.

7.3 Similarly, the Committee must give due weight to the author's allegation of a violation of his son's right under article 14(3)(b) to communicate with counsel of his choosing. In the absence of any explanation from the State party, the Committee considers that the facts as presented to it regarding the author's son being held incommunicado for a period of 40 days reveal a violation of this provision of the Covenant.

7.4 Further, the Committee recalls that the right to be brought 'promptly' before a judicial authority implies that delays must not exceed a few days, and that incommunicado detention as such may violate article 9, paragraph 3.³⁵⁷ In the present case, the author's son was detained incommunicado for 40 days. In the absence of any explanation from the State party, the Committee considers that the circumstances disclose a violation of article 9, paragraph 3.

8. 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

³⁵⁶ See Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

³⁵⁷ Communication No. 277/1988, *Teran Jijon v Ecuador*, Views adopted on 26 March 1992, at para 5.3; Communication No. 1128/2002, *Rafael Marques de Morais v Angola*, Views adopted on 29 March 2005, para 6.3.

before it disclose violations of articles 7, 9, paragraph (3), and 14, paragraphs (3)(b) and (g) of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author's son is entitled to an appropriate remedy, including adequate compensation.

10. By becoming a State 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; pursuant to article 2 of the Covenant, the State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in cases where a violation has been established. The Committee wishes to receive from the State party, within 90 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.]



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 985/2001

<u>Submitted by:</u>	Mrs. Kholinisso Aliboeva (not represented by counsel)
<u>Alleged victim:</u>	Mr. Valichon Aliboev (deceased husband of the author)
<u>State Party:</u>	Tajikistan
<u>Date of communication:</u>	10 July 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92 decision, transmitted to the State party on 11 July 2001 (not issued in document form)
<u>Date of adoption of Views:</u>	18 October 2005

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- Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death penalty after an unfair trial and use of torture during preliminary investigation; absence of legal representation; scope of review of a Supreme court's decision rendered at first instance.

Procedural issues: -

Substantive issues: Right to life, right to a fair trial; prohibition of torture; right of convicted person to have the conviction and sentence reviewed by a higher tribunal according to law.

Articles of the Covenant: 6, 7, 14, paragraphs 1, 3 (d) and (g), and 5, of the Covenant

Article of the Optional Protocol: 2

On 18 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 985/2001. The text of the Views is appended to the present document.

[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

Eighty-fifth session

concerning

Communication No. 985/2001**

Submitted by: Mrs. Kholiniso Aliboeva (not represented by counsel)

Alleged victim: Mr. Valichon Aliboev (deceased husband of the author)

State Party: Tajikistan

Date of communication: 10 July 2001 (initial submission)

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

Meeting on 18 October 2005,

Having concluded its consideration of communication No. 985/2001, submitted to the Human Rights Committee on behalf of Mr. Valichon Aliboev 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 Mrs. Kholiniso Aliboeva, an Uzbek national and Tajik resident, who submits the communication on behalf of her husband, Valichon Aliboev, also an Uzbek born in 1955, who, at the time of the submission of the communication was awaiting execution in Dushanbe, following a death sentence imposed by the Supreme Court of Tajikistan on 24 November 2000. The author claims that her husband is a victim of violations by Tajikistan of his rights under articles 2, paragraph 3 (a); 6, paragraphs 1 and 2; 7; and 14, paragraphs 1, 3 (g) and (f), and 5, of the International Covenant on Civil and Political Rights. While the author does not invoke this provision specifically, the communication appears also to raise issues under article 14, paragraph 3 (d) in relation to her husband, and under article 7 in as much as she is herself concerned (notification of her husband's execution). The author is not represented by counsel³⁵⁸.

1.2 On 11 July 2001, in accordance with rule 92 (old rule 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on Interim Measures and New Communications, requested the State party not to carry out the death sentence against Mr. Aliboev while his case was pending before the Committee. No reply was received from the State party. By letter of 30 October 2001, the author informed the Committee that in

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

³⁵⁸ The Covenant and the Optional Protocol entered into force for the State party on 4 April 1999.

September 2001 she received a Certificate of Death, pursuant to which her husband had been executed on 7 July 2001 (i.e. prior to the receipt of the communication by the Committee³⁵⁹).

Factual background

2.1 Mr. Aliboev arrived in Tajikistan in 1999, to look for work “because of the poor living conditions” in the Ferghana Valley (Uzbekistan). In Dushanbe, he became acquainted with one Mulloakhed, who invited him to join his criminal gang, to which he agreed. According to the author, her husband was not present at the moment of the formation of the gang and he was not aware of its previous criminal activities.

2.2 In March 2000, Mr. Aliboev, together with other members of the gang took a 15 years old boy (U.) hostage and demanded ransom from his father. During the hostage-taking, Aliboev allegedly only stood guard at the entrance, and, afterwards U. was brought to his apartment. Aliboev allegedly looked after the hostage and gave him food and water.

2.3 Allegedly, the father refused to pay the ransom. Allegedly, a member of the gang ordered as Aliboev to administer an anaesthetic injection to the hostage, after which one of his fingers was cut off. A photograph and the finger were sent to the hostage’s father, who then paid the ransom.

2.4 On 11 May 2000, officers of the Department for Fight Against Organized Crime of the Ministry of Interior arrested Mr. Aliboev. According to the author, he was kept “incommunicado” until 18 May 2000, when his sister Salima was allowed to visit him. Allegedly, she found him in a poor physical condition – he was bruised, his face was swollen from beatings, and his body bore marks of torture. Allegedly, since his arrest, Aliboev had been beaten constantly and subjected to torture to make him confess guilt and his internal organs were seriously injured. Some 20 days after his arrest (no specific date is indicated), he was transferred to an Investigation Detention Centre (SIZO), suffering pain in his kidneys and stomach. The author adds that her husband’s lawyer was only appointed after his indictment (the exact date is not provided).

2.5 On 24 November 2000, the Supreme Court of Tajikistan found the gang guilty of 15 criminal acts (11 armed robberies, one murder and one attempted murder, and 3 hostage takings). The author points out that notwithstanding that her husband had participated in only one of the crimes attributed to the gang he received the maximum sentence, while “active” gang members who had participated in several crimes received equal punishment or were sentenced to a prison term.

2.6 The author claims that the sentence of the Supreme Court of 24 November 2000 became executory immediately, and Tajik law does not allow for an appeal from such convictions. The author’s husband did request the Prosecutor General and the Chairman of the Supreme Court to introduce a protest following the supervisory procedure, but his claims were rejected.

2.7 The author contends that neither during the investigation nor in court was her husband offered the services of an interpreter, although he was an Uzbek, had received his school education in Russian, and only had basic knowledge of Tajik. He was thus unable to understand the essence of the charges brought against him nor the witnesses’ and victims’ depositions. She contends that Aliboev did not request an interpreter during the investigation, because of the partiality of the investigator and the torture he had been subjected to, while in court he was not even asked whether he needed the services of an interpreter.

2.8 In her letter to the Committee of 30 October 2001, the author explains that in August 2001 her husband’s lawyer was informed by the Supreme Court of Tajikistan that Mr. Aliboev had been executed. In September 2001 (exact date not provided), the author received an official notification and a Certificate of Death, according to which her husband was executed by firing squad on 7 July 2001. She claims that although the State institutions were aware of the execution, no one informed her when she applied to them on her husband’s behalf between July and September 2001 but that everywhere she received “assurances for assistance”. She invites the Committee to continue the examination of her husband’s case.

The complaint:

³⁵⁹ The communication was received on 11 July 2001.

3.1 The author claims that her husband's sentence was unfair and disproportionate in relation to the acts he was convicted of, in violation of article 14, paragraph 1, of the Covenant.

3.2 She also claims that her husband was the victim of violations of his rights under articles 7 and 14, paragraph 3 (g), of the Covenant, because he was beaten and tortured after his arrest to make him confess guilt, and the confession was used against him in court.

3.3 Article 14, paragraph 3 (f), of the Covenant is said to have been violated, as the author's husband had not been offered the services of an interpreter.

3.4 Mr. Aliboev's right to have his conviction reviewed by a higher tribunal is said to have been violated, contrary to the requirements of article 14, paragraph 5, of the Covenant.

3.5 While she does not invoke the provision specifically, the author's claim that her husband had been offered the services of a lawyer only upon presentation of the charges against him may raise issues under article 14, paragraph 3 (d), of the Covenant.

3.6 The author claims that her husband was arbitrarily deprived of life following an unfair trial, in violation of articles 6 and 14 of the Covenant.

3.7 Finally and notwithstanding the fact that the author does not raise the issue specifically, the communication also appears to raise issues under article 7, in her own respect, because of the failure of the authorities to inform the author in advance of the date of her husband's execution, or subsequently, of the location of his burial site.

Absence of State party cooperation

4. By Notes Verbales of 11 July 2001, 5 November 2001, 19 December 2002, and 10 November 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal³⁶⁰. In the absence of any observations from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement.

5.3 With regard to the author's claim under article 14, paragraph 3(g), concerning the lack of interpretation during the investigation and in court, the Committee has noted that she had not indicated what steps, if any, her husband had taken to submit this allegation to the competent authorities and in court, and what the eventual outcome was. The Committee finds that in respect of this particular claim, domestic remedies have not been exhausted. Accordingly, the Committee finds that this part of the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

5.4 The Committee has also noted the author's claim that her husband's sentence was unfair and disproportionate, in violation of article 14, paragraph 1, of the Covenant. Although

³⁶⁰ See, inter alia, *Khomidova v. Tajikistan*, Communication No. 1117/2002, Views adopted on 29 July 2004, and *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005.

the State party has presented no observations, the Committee notes that this claim relates to an evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice³⁶¹. The material before the Committee does not reveal that the evaluation of evidence or the conduct of the trial suffered from such defects. In the circumstances, it considers that the author has failed to sufficiently substantiate her claim in this relation. Accordingly, this part of the communication is inadmissible under article 2, of the Optional Protocol.

5.4 The Committee considers the remainder of the author's claims sufficiently substantiated, for purposes of admissibility, in that they appear to raise issues under articles 6, 7, and 14, paragraphs 3 (d) and (g), and 5, of the Covenant. It proceeds to their examination on the merits.

Examination of the merits

The Human Rights 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, paragraph 1, of the Optional Protocol.

The Committee has taken note of the author's allegation that following his arrest on 11 May 2000, her husband was beaten and tortured by investigators. In substantiation, she affirms that Mr. Aliboev's sister had seen him on 18 May 2000, and he displayed signs of beatings and torture. In the absence of any State party information, due weight must be given to the author's duly substantiated claim. The Committee therefore considers that the facts before it justify the conclusion that Mr. Aliboev was subjected to treatment in violation of article 7 of the Covenant.

As the above mentioned acts were inflicted on Mr. Aliboev by the investigators, with a view to making him confess guilt in several crimes, the Committee considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

The Committee notes the author's claim that her husband was not represented by a lawyer until after his indictment, i.e. during a period when he was subjected to beatings and torture, and that the State party has not refuted this allegation. The Committee recalls its jurisprudence that, particularly in capital cases, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings³⁶². In the present case, the author's husband faced capital charges, and was without any legal defence during the preliminary investigation. It remains unclear from the material before the Committee whether the author or her husband requested legal assistance, or sought to engage a private lawyer. The State party, however, has not presented any explanation on this issue. Accordingly, the Committee is of the view that the facts before it reveal a violation of Mr. Aliboev's right under article 14, paragraphs 3 (d), of the Covenant.

The author further claimed that her husband's right to have his death sentence reviewed by a higher tribunal according to law was violated. From the documents available to the Committee, it transpires that on 24 November 2000, Mr. Aliboev was sentenced to death at first instance by the Supreme Court. The judgment mentions that it is final and not subject to any further appeal. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case³⁶³. In the absence of any explanation from the State party, the Committee considers that the absence of a possibility to appeal judgments of the Supreme Court passed at first instance to a higher

³⁶¹ See Communication No 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

³⁶² See for example, *Aliiev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

³⁶³ See *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005, *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, Views adopted on 6 April 1998, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

judicial instance falls short of the requirements of article 14, paragraph 5. Consequently, there has been a violation of this provision³⁶⁴.

With regard to the author's remaining claim under article 6 of the Covenant, the Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the current case, the sentence of death on the author's husband was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6, paragraph 2, thereof.

The Committee has taken note of the author's claim that the authorities did not inform her about her husband's execution but continued to acknowledge her intercessions on his behalf following the execution. The Committee notes that the law then in force did not allow for a family of an individual under sentence of death to be informed either of the date of execution or the location of the burial site of the executed prisoner. The Committee understands the continued anguish and mental stress caused to the author, as the wife of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her husband and the failure to inform her of his burial place, amounts to inhuman treatment of the author, in violation of article 7 of the Covenant³⁶⁵.

7. 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 Mr. Aliboev's rights under articles 6, paragraph 2; 7; and 14, paragraphs 1, 3 (d) and (g) and 5 of the Covenant, as well as under article 7 in relation to Ms. Aliboeva herself.

8. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an appropriate remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

9. 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 90 days, information about the measures taken to give effect to these 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

³⁶⁴ See for example, *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005, *Aliiev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

³⁶⁵ See, for example, *Khalilova v. Tajikistan*, Communication No 973/2001, Views adopted on 30 March 2005, and *Lyashkevich v. Belarus*, Communication No 887/1999, Views adopted on 3 April 2003.



**International covenant
on civil and
political rights**

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CCPR/C/83/D/973/2001
13 April 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2005

VIEWS

Communication No. 973/2001

Submitted by: Mrs. Maryam Khalilova (not represented by counsel)

Alleged victim: Mr. Validzhon Alievich Khalilov (author's son)

State party: Tajikistan

Date of initial communication: 14 May 2001 (initial submission)

Document references: Special Rapporteur's rule 92/97 (old rule 86/91) decision, transmitted to the State party on 16 May 2001. (not issued in document form)

Date of adoption of Views: 30 March 2005

Subject matter: Death sentence after unfair proceedings.

Procedural issues: Failure of State party to provide information.

Substantive issues: Imposition of death sentence after unfair trial and ill-treatment during preliminary investigation.

Articles of the Covenant: 6, 7, 10, 14

Articles of the Protocol: 2, 5 (4)

On 30 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 973/2001. The text of the Views is appended to the present document.

[ANNEX]

GE.05-41101

* Made public by decision of the Human Rights Committee.

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

Eighty-third session

Concerning

Communication No. 973/2001**

Submitted by: Mrs. Maryam Khalilova (not represented by counsel)
Alleged victim: Mr. Validzhon Alievich Khalilov (author's son)
State party: Tajikistan
Date of initial communication: 14 May 2001 (initial submission)

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

Meeting on 30 March 2005,

Having concluded its consideration of communication No. 973/2001, submitted to the Human Rights Committee on behalf of Mr. Validzhon Alievich Khalilov 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,

Adopts the following:

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

1.1 The author of the communication is Mrs. Maryam Khalilova, a Tajik citizen born in 1954. She submits the communication on behalf of her son – Validzhon Alievich Khalilov, also a Tajik national, born in 1973, who at the time of submission of the communication was kept on death row in Detention Centre SIZO No 1 in Dushanbe and awaiting execution, following a death sentence handed down by the Supreme Court of Tajikistan on 8 November 2000. She claims that her son is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 4; 10, paragraph 1; and 14, paragraphs 2, 3 (g), and 5, of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 7 of the Covenant, with regard to the author and her son, although this provision was not directly invoked by the author. The author is not represented by counsel.

1.2 On 16 May 2001, in accordance with rule 92 (old rule 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence against Mr. Khalilov while his case was pending before the Committee. This request for interim measures for protection was reiterated on 17 December 2002 and on 15 April 2004. No reply has been received from the State party. By letter of 18 February 2005, the author informed the Committee that on 10 February 2005, she received an attestation signed by a Deputy Chairman of the Supreme Court, in accordance to which her son's execution had been carried out on 2 July 2001.

Factual background

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

2.1 In 1997, one Saidmukhtor Yorov formed an armed gang in the Gulliston district, Lenin region, Tajikistan. By force and through the use of threats, he recruited young people into his gang and forced them to commit several serious crimes. The author explains that her son was threatened at gun point and forced to join Yorov's gang. When her son realised the so-called "anti- constitutional" nature of the gang's activities, he escaped and hid in the house of an aunt in the Lokhur district, to avoid persecution by this gang.

2.2 In April 1997, Mr. Khalilov visited his home town (Khosilot kolkhoz) in the Gulliston district, to attend the wedding of his sister. After the ceremony, Mr. Khalilov and his father went to pray in the town mosque. According to the author, her son was recognized there by members of Yorov's gang who immediately apprehended him and brought him before Yorov. Mr. Khalilov was forced to join the ranks of the group again.

2.3 In late September 1997, government troops dropped leaflets from helicopters, containing a Presidential appeal to all persons who "by force and lies" had joined Yorov's gang. The President explained that in case of peaceful surrender, members of the gang would be pardoned. Mr. Khalilov escaped again; the gang thereupon threatened his parents with murder. Members of the gang located him at his aunt's house and brought him to Yorov, who threatened that all members of his family would be killed if he escaped once again.

2.4 In December 1997, however, Mr. Khalilov did escape again and hid in another aunt's house, in the Hissar region. Shortly afterwards, he learned that the gang had been disbanded, that Yorov was prosecuted, and that the charges against him were withdrawn. He left the Hissar region in June 1998 to return to Lokhur district. There, the authorities arrested him in January 2000.

2.5 According to the author, her son was beaten by investigators to make him confess participation in different unresolved crimes, including murder, use of violence, robberies and theft, and different other crimes that occurred between 1998 and 2000. According to her, the investigators refused to interrogate neighbours of the aunts in whose houses her son hid between December 1997 and January 2000, and who could have testified that he was innocent.

2.6 On an unspecified date, Mr. Khalilov was transferred from the Lenin District Police Department to Kaferingansky District Police Department. In the meantime, his father was taken from his workplace and brought to his son in the Kaferingansky District Police Department. The father noted that his son had been beaten and stated that he would complain to the competent authorities. The investigators began to beat him in front of his son. The author's son was threatened and told that he had to confess his guilt of two murders during a TV broadcast or otherwise his father would be killed. Mr. Khalilov confessed guilt in the two murders as requested. Notwithstanding, the investigators killed his father³⁶⁶.

2.7 On 12 February Mr. Khalilov was shown again on national television (broadcast "Iztirob"). According to the author, he had been beaten and his nose was broken, but the cameras showed his face only from one particular angle that did not reveal these injuries.

2.8 Mr. Khalilov's case was examined by the Supreme Court jointly with the cases of other five co-accused³⁶⁷. The author's son was found guilty of the crimes under articles 104 (2) (homicide), 181 (3) (hostage taking), 186 (3) (banditism), 195 (3) (illegal buying, selling, keeping, transporting of weapons, ammunitions, explosives, etc.), 244 (theft), and 249 (robbery with use of violence), of the Criminal Code of Tajikistan. He was sentenced to death on 8 November 2000. According to the author, no victim or injured party recognized her son in court as a participant in the criminal acts, notwithstanding the fact that the witnesses had declared that they could recognize by face every participant in the crimes. The Court allegedly ignored their statements and refused to take them into account or to include them in its decision.

³⁶⁶ The author submits a letter of her son (dated 27 December 2000), addressed to the Committee, in which M. Khalilov contends that his father was brought to the police department and was beaten, humiliated, and burned with an iron by the investigators, until he died. According to Mr. Khalilov, his father was returned home dead and was buried on 9 February 2000. Mr. Khalilov gives the names of two officials who participated in his and his father's beatings: one N., chief of a Criminal Inquiry Department, and his deputy, U. According to him, there were also 3-4 other persons.

³⁶⁷ The exact dates of the proceedings are not provided.

2.9 The author's son filed a request for presidential pardon, but his request was denied on 23 May 2001.

2.10 In a letter dated 5 June 2003, the author reiterates that her son was forced to join the gang of Yorov but did not commit any crimes. He escaped the gang and after the liquidation of the gang, when no risk of persecution by the gang remained, he "returned to normal life". When the crimes were committed, he was at his aunts' houses. After his arrest in 2000, he was charged for crimes that were committed by the gang and was subsequently sentenced to death. It is stated that the judgment was upheld by the cassation instance" (date and instance not provided).

2.11 The author also explains that she does not know where her son is held. The officials of the SIZO No1 Detention Centre in Dushanbe allegedly had refused to accept her parcels, telling that her son was removed, without explaining further.

2.12 On 18 February 2005, the author informed the Committee that she received a letter from the Deputy Chairman of the Supreme Court, dated 2 February 2005, where it was stated that her son was executed in 2 July 2001.

The complaint

3.1 The author claims that her son's rights under article 10, paragraph 1, were violated, as he was severely beaten by investigators. Although the author does not invoke it specifically, this part of the communication may also raise issues under article 7 of the Covenant in Mr. Khalilov's respect.

3.2 Although the author does not specifically invoke this provision, her claim that in order to put her son under more pressure, the investigators had brought her husband to the detention centre where he was beaten to death in front of his son, appears to also raise issues under article 7 of the Covenant, in her son's respect.

3.3 The author claims that the facts as presented amount to a violation of her son's right to be presumed innocent under article 14, paragraph 2. She recalls that her son was shown on national television during the investigation – i.e. before any determination of his guilt by a court – and was forced publicly to confess his guilt for several serious crimes.

3.4 The author further claims that her son was a victim of violation of article 14, paragraph 3 (g), of the Covenant, as investigators forced him to confess his guilt.

3.5 Without further substantiating this claim, the author contends that Mr. Khalilov's right under article 14, paragraph 5, to have his sentence reviewed by a higher judicial instance in accordance with the law, was also violated.

3.6 The author contends that her son's rights under article 6, paragraphs 1 and 4, in conjunction with article 14, were violated because her son was sentenced to death, after an unfair trial that did not meet the requirements of due process.

3.7 Finally and notwithstanding the fact that the author does not raise the issue specifically, the communication also appears to raise issues under article 7, in her own respect, because of the alleged constant refusal of Tajik authorities to reveal to the author the current situation and whereabouts of her son.

State party's failure to respect the Committee's request for interim measures under rule 92

4.1 The Committee notes that the State party had executed the author's son despite the fact that a communication had been registered before the Human Rights Committee under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls³⁶⁸ that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

4.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her son was denied rights under Articles 6, 10 and 14 of the Covenant. She further makes claims that could be subsumed under article 7, even though this article is not specifically invoked. Having been notified of the communication, the State party has breached its obligations under the Protocol, by executing the alleged victim before the Committee concluded its consideration and examination and the formulation and communication of its Views. It is particularly inexcusable for the State to have done so after the Committee has acted under rule 92 (old 86) of its Rules of Procedure, requesting that the State party refrains from doing so.

³⁶⁸ See *Piandong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000.

4.3 The Committee also expresses great concern about the lack of State party's explanation for its action, in spite of several requests made in this relation by the Committee.

4.4 The Committee recalls³⁶⁹ that interim measures pursuant to rule 92 (old 86) of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the execution of the author's son undermines the protection of Covenant rights through the Optional Protocol.

Absence of State party submissions

5. By Notes Verbales of 16 May 2001, 17 December 2002, and 15 April 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal.³⁷⁰ In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted on the basis of the evidence made available to it. In the absence of any State party objection, it considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are satisfied.

6.3 The Committee has noted the author's claim that her son's rights under article 6, paragraph 4, of the Covenant, were violated. From her submission, however, it transpires that Mr. Khalilov had submitted a request for Presidential pardon on an unspecified date, and that his request was denied, by Presidential decree, on 23 May 2001. In the circumstances, the Committee finds that the author had failed sufficiently to substantiate this claim for purposes of admissibility, and decides accordingly that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee considers that the remaining author's claims have been sufficiently substantiated for purposes of admissibility, in that they appear to raise issues under articles 6, 7, 10, and 14, of the Covenant.

Examination of the merits

7.1 The Human Rights 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, paragraph 1, of the Optional Protocol.

7.2 The Committee has taken note of the author's allegations that her son, while in detention, was ill-treated and beaten by the investigators to force him to confess guilt and that in order to put additional pressure on him, his father was beaten and tortured in front of him and as a consequence died in the police premises. The author furthermore identified by name some of the individuals alleged to have been responsible for the beatings of her son and for burning her husband's hands with an iron. In the absence of any State party information, due weight must be given to the author's allegations, to the effect that they have been sufficiently substantiated. The Committee considers that the facts before it justify the conclusion that the

³⁶⁹ See *Saidova v. Tajikistan*, Communication No 964/2001, Views adopted on 8 July 2004.

³⁷⁰ See, inter alia, *Khomidova v. Tajikistan*, Communication No 1117/2002, Views adopted on 29 July 2004.

author's son was subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

7.3 As above mentioned acts were inflicted by the investigators on Mr. Khalilov to make him to confess guilt in several crimes, the Committee furthermore considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

7.4 The Committee has noted the author's claim, under article 14, paragraph 2, that her son's right to be presumed innocent was violated by investigators. She contends that her son was forced to admit guilt on at least two occasions during the investigation on national television. In the absence of any information from the State party, due weight must be given to these allegations. The Committee recalls its General Comment No. 13 and its jurisprudence³⁷¹ that it is "a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case, it concludes that the investigating authorities failed to comply with their obligations under article 14, paragraph 2.

7.5 The author claimed that her son's right to have his death sentence reviewed by a higher tribunal according to law was violated. From the documents before the Committee, it transpires that on 8 November 2000, the author's son was sentenced to death at first instance by the Supreme Court. The judgment mentions that it is final and not subject to any further cassation appeal. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case³⁷². In the absence of any pertinent explanation from the State party, the Committee considers that the absence of a possibility to appeal to a higher judicial instance judgments of the Supreme Court handed down at first instance, falls short of the requirements of article 14, paragraph 5, and, consequently, that there has been a violation of this provision³⁷³.

7.6 With regard to the author's claim under article 6, paragraph 1, of the Covenant, the Committee recalls that that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant³⁷⁴. In the current case, the sentence of death of the author's son was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

7.7 The Committee has noted the author's claim that the Tajik authorities, including the Supreme Court, have consistently ignored her requests for information and systematically refused to reveal any detail about her son's situation or whereabouts. The Committee understands the continued anguish and mental stress caused to the author, as the mother of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. The secrecy surrounding the date of execution, and the place of burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her son amounts to inhuman treatment of the author, in violation of article 7 of the Covenant³⁷⁵.

8. 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 Mr. Khalilov's rights under articles 6, paragraph 1; 7; 10, paragraph 1; and 14, paragraphs 2, 3 (g) and 5, of the Covenant, and a violation of article 7 in the author's own respect.

³⁷¹ See, for example *Gridin v. Russian Federation*, Communication No 770/1997, Views adopted on 20 July 2000.

³⁷² See *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, Views adopted on 6 April 1998, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

³⁷³ See for example *Aliev v. Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

³⁷⁴ See *Conroy Levy v. Jamaica*, Communication No. 719/1996, Views adopted on 3 November 1998, *Clarence Marshall v. Jamaica*, Communication No. 730/1996, Views adopted on 3 November 1998, *Kurbanov v. Tajikistan*, Communication No. 1096/2002, Views adopted on 6 November 2003, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

³⁷⁵ See Communications Nos. 886/1999, *Bondarenko v. Belarus*, and 887/1999, *Lyashkevich v. Belarus*, Views adopted on April 2003.

9. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including information on the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations 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 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 90 days, information about the measures taken to give effect to these 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]



**International covenant
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HUMAN RIGHTS COMMITTEE
Eighty-first session
5 – 30 July 2004

VIEWS

Communication No. 1117/2002

<u>Submitted by:</u>	Mrs. Saodat Khomidova (not represented by counsel)
<u>Alleged victim:</u>	Mr. Bakhrom Khomidov (author's son)
<u>State party:</u>	Tajikistan
<u>Date of initial communication:</u>	17 September 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 86/91 decision, transmitted to the State party on 27 September 2002. (not issued in document form)
<u>Date of adoption of views:</u>	29 July 2004

On 29 July 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1117/2002. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Eighty-first session

concerning

Communication 1117/2002**

Submitted by: Mrs. Saodat Khomidova (not represented by
counsel)

Alleged victim: Mr. Bakhrom Khomidov (author's son)

State party: Tajikistan

Date of initial communication: 17 September 2002 (initial submission)

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

Meeting on 29 July 2004,

Having concluded its consideration of communication No. 1117/2002, submitted to the Human Rights Committee on behalf of Mr. Bakhrom Khomidov, 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,

Adopts the following:

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

1.1 The author of the communication dated 17 September 2002 is Mrs. Saodat Khomidova, a Tajik national. She submits the communication on behalf of her son, Bakhrom Khomidov, a Tajik citizen born in 1968, at present detained on death row in Dushanbe, after being sentenced to death by the Criminal Chamber of the Supreme Court on 12 September 2001. She claims that her son is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 2; 7, 9, and 14, paragraphs 1, and 3 (b) and (g), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 14, paragraph 3 (e) of the Covenant, although this provision is not directly invoked. She is not represented by a counsel.

1.2 On 27 September 2002, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures requested the State party not to carry out the death sentence against Mr. Khomidov while his case was under consideration by the Committee. No reply was received from the State party in this respect³⁷⁶.

Facts, as submitted by the author

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

³⁷⁶ The Committee became aware of the fact that the President of Tajikistan announced, on 30 April 2004, that a moratorium on the executions of death sentences would be introduced shortly; apparently no execution was carried out since this date. On 2 June 2004 the lower house of the Parliament adopted the law "on the suspension of the application of the death penalty", and on 8 July 2004 it was endorsed by the upper house of the Parliament. However, to have the law entered into force, it still has to be signed by the President.

2.1 In the night of 26 to 27 February 2000, the author's neighbours, Mr. and Mrs. Pirnozarov, were shot death at their domicile. On 25 May 2000, the author's son was arrested near his mother's house in Dushanbe, allegedly without explaining him the reasons for his arrest. The police are said to have been assisted by friends and relatives of Mr. and Mrs. Pirnozarov.

2.2 Mr. Khomidov's family was not informed of the arrest. His relatives unsuccessfully tried to locate him; they only learned that he was arrested by the police in relation to the murder ten days later. Mr. Khomidov allegedly was charged with murder one month after his arrest.

2.3 Allegedly, Mr. Khomidov was detained for four months in three different district police offices as police wanted to force him to confess guilt in several other crimes. The conditions of detention in these facilities allegedly were totally inadequate for long periods of detention. No relative was able to see him until his transfer to the investigation detention centre in October 2000. The visits took place always in the immediate presence of the investigators or personnel of the detention centre.

2.4 After the arrest, no lawyer was assigned to the author's son; he was not informed of his right to be represented by a lawyer. Only after two months was he provided with a lawyer chosen by the investigators. According to the author, this lawyer was incompetent and worked in the interest of the prosecution, without consulting the family on the progress of the investigation. The consultations between the lawyer and the author's son always took place in presence of the investigators.

2.5 The author contends that her son was tortured with electric shocks and was beaten throughout the investigation, forcing him to sign written confessions prepared by the investigators in advance; the majority of these confessions were signed in the absence of a lawyer. The author provides the names of the prosecution officials who she claims tortured her son. She claims that her son was beaten with batons, and parts of his body were electrocuted with a metal bar, causing head and ribs injuries. She also affirms that her son showed her his crooked fingers, a consequence of the torture used.

2.6 Mr. Khomidov was accused of being a member of a criminal gang, headed by one N. I., specialized in robbery. The author's son was charged with ten acts of robbery and allegedly was the only member of the group to be prosecuted (five other suspected members of the gang were killed in a police action in May 2000); he was also charged with the assault of a driver and the hijacking of his car; he was further accused of illegal possession and storage of firearms and of participation in an attack against Governmental troops, and an attempt to blow up the house of a police inspector. Mr. Khomidov was put under psychological pressure also because the family of Mr. and Mrs. Pirnazarov, supported by the police, had set fire to his house and forced his wife and children to leave the premises, while the police illegally confiscated his car and the furniture of his house. His father's mill was destroyed and his animals were taken away; his father was beaten with a rifle butt. Mr. Khomidov allegedly was kept informed of these incidents by the police in order to put him under additional pressure.

2.7 The author further claims that much of the investigation proceedings were conducted in the lawyer's absence, thus making the evidence obtained illegal and inadmissible.

2.8 The Supreme Court judge, S. K., allegedly acted in an accusatory manner. Mr. Khomidov's lawyer's requests were denied, particularly when he asked to call supplementary witnesses, and when he requested that a medical expert examine him to clarify whether he had sustained injuries as a result of the torture he was subjected to. The only witness of the crime was the 5-year old daughter of the neighbours, and she was the only one who identified Mr. Khomidov as the culprit. According to the author, the child's testimony was the consequence of the police "preparation" she was subjected to. As to the episode related to the hijacking of a car, the author alleges that the eyewitnesses could not recognize her son during an identification parade and in court.

2.9 On 12 September 2001, the Supreme Court found Mr. Khomidov guilty of all the charges against him and sentenced him to death. According to the author, the death penalty was imposed on her son because the judge was afraid of eventual persecution against her by the victims' family. On 13 November 2001, on appeal, the Criminal College of the Supreme Court upheld the decision. On 3 October 2002, the President of Tajikistan refused to grant her son a pardon.

2.10 The author adds that according to her son, in August 2002, several investigators visited him on death row and asked him to confess guilt in other unsolved crimes dating back 4-5 years, including the killing of some Members of Parliament. He was apparently told that since he was sentenced to death, confessing to one or two more crimes would not change his situation.

2.11 On 26 January 2004, the author requested the Committee to reiterate its request for interim measures for protection, as she had received unofficial information that her son's execution had been scheduled for early February.

2.12 On 31 March 2004, she informed the Committee that she met her son on 27 March, and that she had found him in bad health and bad psychological condition. He was very nervous, shouted throughout the meeting, and stated that he could no longer live in such uncertainty and preferred to be executed. He allegedly threatened to commit suicide. According to her, he also had skin problems (permanent itch), a "tumor" in the thorax, and other health problems, but he received no medical assistance or examination.

2.13 The author reiterates that investigators requested her son to confess guilt in other crimes. She alleges that her son was beaten by investigators, as he displayed marks and his face was scratched. She filed no complaint with the authorities in this respect, as she was afraid that they would further harm her son or would execute him.

The claim

3.1 The author claims that her son's rights under article 7 of the Covenant were violated, as he was beaten and subjected to torture in detention.

3.2 Article 9, paragraphs 1 and 2, are said to have been violated, as Mr. Khomidov was detained illegally, for a long period of time, without being informed of any of the charges against him.

3.3 Article 14, paragraph 1, of the Covenant is said to have been violated, as the court did not observe its obligation of impartiality and independence. In this context, the author's claim that the judge, under pressure from the relatives of the murder victims, refused to order a medical examination to ascertain whether Mr. Khomidov's injuries resulted from torture or to call witnesses on his behalf, while not specifically invoked, may raise issues under article 14, 3 (e), of the Covenant.

3.4 The author claims a violation of article 14, paragraphs 3 (b), as her son was not allowed sufficient time to prepare his defence, and because he was not offered sufficient time and conditions to meet with his lawyer.

3.5 Article 14, paragraph 3 (g), is said to have been violated as Mr. Khomidov was forced to testify against himself under duress.

3.6 Finally, the author claims that her son's right to life under article 6, paragraphs 1 and 2, of the Covenant was violated, because he was sentenced to death after a trial in which the guarantees in article 14 of the Covenant were not met.

Issues and proceedings before the Committee

4. On 18 September 2002, 2 December 2003, 28 January 2004 and 14 April 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated³⁷⁷.

³⁷⁷ See *J.G.A. Diergaardt et al. v. Namibia*, Case No. 760/1997, Views adopted on 25 July 2000, paragraph 10.2.

Committee's decision on admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. No challenge from the State party to this conclusion has been received. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol have thus been met.

5.3 The Committee considers that the author's claims have been sufficiently substantiated for purposes of admissibility, in that they appear to raise issues under articles 6, 7, 9 and 14, paragraphs 1 and 3, (b), (e) and (g), of the Covenant. It therefore proceeds to their examination on the merits.

Examination of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

6.2 The Committee has noted the author's detailed description of the acts of torture to which her son was subjected to make him confess guilt. She has identified by name several of the individuals alleged to have participated in the above events. In the circumstances, and in the absence of any explanations from the State party in this respect, due weight must be given to her allegations. As the author has provided detailed information of specific forms of physical and psychological torture inflicted upon her son during pre-trial detention (see paragraphs 2.5 and 2.6), the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 The author has claimed that her son was detained for one month, during which time he was not informed of the charges against him, and that her son's detention was illegal, in that he was not brought promptly before a judge or other official officer authorized by law to exercise judicial power to review the legality of his detention. In the absence of any State party observations, due weight must be given to the author's allegations. Accordingly, the Committee considers that the facts before it disclose a violation of article 9, paragraphs 1 and 2, of the Covenant.

6.4 The Committee has noted the author's claims that her son was legally represented only one month after being charged with several crimes and all meetings between him and the lawyer subsequently assigned by the investigation were held in investigators' presence, in violation of article 14, paragraph 3 (b). The Committee considers that the author's submissions concerning the time and conditions in which her son was assisted by a lawyer before the trial adversely affected the possibilities of the author's son to prepare his defence. In the absence of any explanations by the State party, the Committee is of the view that the facts before it reveal a violation of Mr. Khomidov's rights under article 14, paragraph 3 (b), of the Covenant.

6.5 The Committee has noted the author's claim that the trial of Mr. Khomidov was unfair, as the court did not fulfil its obligation of impartiality and independence (see paragraphs 2.8 and 2.9 above). It has noted also the author's contention that her son's lawyer requested the court to call witnesses on his behalf, and to have Mr. Khomidov examined by a doctor to evaluate his injuries sustained as a result of the torture to which he was subjected to make him confess guilt. The judge denied his request without providing any reason. In the absence of any pertinent State party information on this claim, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (e) and (g), of the Covenant.

6.6 With regard to the author's claim that her son's right to life under article 6 of the Covenant has been violated, the Committee recalls its constant jurisprudence³⁷⁸ that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant, if no appeal of the sentence is possible. In this case, the sentence of death was passed in violation

³⁷⁸See Conroy Levy v. Jamaica, communication No. 719/1996, and Clarence Marshall v. Jamaica, communication No. 730/1996.

of the right to a fair trial as set out in article 14 of the Covenant, and thus also in breach of article 6.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; 14, paragraphs 1, and 3 (b), (e) and (g), read together with article 6, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Khomidov with an effective remedy, entailing commutation of his sentence to death, a compensation, and a new trial with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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 90 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]



**International covenant on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session
5 - 30 July 2004

VIEWS

Communication No. 964/2001

Submitted by: Mrs. Barno Saidova (not represented by counsel)

Alleged victim: The author's husband, Mr. Gaibullodzhon Ilyasovich Saidov, deceased.

State party: Tajikistan

Date of communication: 11 January 2001 (initial submission)

Document references: Special Rapporteur's rule 86/91 decision, transmitted to the State party on 12 January 2001 (not issued in document form)

Date of adoption of Views: 8 July 2004

On 8 July 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 964/2001. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Eighty-first session

concerning

Communication No. 964/2001**

Submitted by: Mrs. Barno Saidova (not represented by counsel)

Alleged victim: The author's husband, Mr. Gaibullodzhon Ilyasovich Saidov, deceased.

State party: Tajikistan

Date of communication: 11 January 2001 (initial submission)

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

Meeting on 8 July 2004,

Having concluded its consideration of communication No. 964/2001, submitted to the Human Rights Committee by Mrs. Barno Saidova 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,

Adopts the following:

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

1.1 The author of the communication is Mrs. Barno Saidova, a Tajik national born in 1958. She submits the communication on behalf of her husband – Gaibullodzhon Saidov, also Tajik national, born in 1954 and who, at the time of submission of the communication was detained on death row and awaited execution after being sentenced to death by the Military Chamber of the Supreme Court of Tajikistan on 24 December 1999. She claims that her husband is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 2; 7; 9, paragraph 2; 10, paragraph 1; and 14, paragraphs 1, 2, 3 (b), (d), and (g), and 5, of the International Covenant on Civil and Political Rights³⁷⁹. The author is not represented by counsel.

1.2 On 12 January 2001, in accordance with rule 86 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence against Mr. Saidov while his case was pending before the Committee. No reply was received from the State party in this regard. From the author's subsequent submissions, it transpired that Mr. Saidov was executed on 4 April 2001.

The facts as presented by the author

2.1 According to the author, on 4 November 1998, approximately 600 armed combatants who were based in Uzbekistan but of Tajik origin supported one colonel Khudoberdiev and

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

³⁷⁹ The Optional Protocol entered into force for Tajikistan on 4 April 1999.

infiltrated the Leninabad region in Tajikistan. After occupying several official buildings in the area, they requested an amnesty for all of Khudoberdiev's collaborators, and their safe return in Tajikistan.

2.2 The same day, Mr. Saidov, who lived in Khukhandzh, in the invaded region and was a driver, became acquainted with some of the combatants. He decided to drive several injured combatants to the hospital and to bury victims of the fighting between the followers of Kudoberdiev and governmental troops. Mr. Saidov was armed.

2.3 On 7 November 1998, the combatants began to retreat towards Uzbekistan. Mr. Saidov went to the Kyrgyz border, where he was arrested by the Tajik authorities on 25 November 1998. According to the author, her husband, along with other individuals arrested in the so-called "November events", was beaten to make him confess. The author was allowed to see her husband in the police station one week after his arrest. During her visit, she noted that he had been beaten and that his body bore black and blue bruises. He had a bruise on top of his right eyebrow, on his thorax, his legs were swollen, and he was unable to stand; during one month he secreted blood, because of internal injuries. Allegedly, no medical doctor visited him. The author contends that her husband was threatened that his wife and daughter would suffer if he refused to confess guilt. Another individual arrested in the same context was allegedly shot in the foot, to make him confess.

2.4 According to the author, during the month following the arrest, the national television constantly broadcast press conferences featuring those who had "repented" after their arrest, who bore signs of beatings. Her husband was also shown, and the scar on his right eyebrow was visible. According to the author, Mr. Saidov's general health status deteriorated as a consequence of the beatings, in particular his eyesight.

2.5 Although Mr. Saidov's arrest took place on 25 November 1998, he was officially charged only on 1 January 1999. He was not informed of his right to legal representation upon arrest. The author was the only family member who was allowed to see him few times. Her husband's lawyer was not chosen by the victim but was assigned to him by an investigator and appeared only in about mid-March 1999. According to the author, he only met once with Mr. Saidov, during the investigation.

2.6 The trial started in June 1999. The Military Chamber of the Supreme Court, sitting in Military Unit 3501 in Khudzhand. The hearing took place in a meeting room with broken windows. No mention of the secret nature of the trial or of any limitation for the public appears in the court's decision, according to the author, but a list was prepared and only one family member per accused was admitted into the courtroom.

2.7 The victim's lawyer was often absent during the trial and many of Mr. Saidov's interrogations took place in his absence; the lawyer was also absent when the judgment was delivered.

2.8 According to the author, all of the accused, including her husband, declared in court that during the investigation they were beaten and threatened to force them to confess or to testify against themselves or against each other. However, the Court ignored these declarations and did not proceed to verify them. According to the author, the presiding judge had decided to convict the accused by the time of the opening of the trial; for that reason, he allegedly conducted the trial in an "accusatory manner".

2.9 The author claims that her husband was detained in the Khudzhand District Police building from 25 November 1998 to 12 January 1999, although an arrested person was supposed to be kept there only for a maximum period of three days. On 12 January 1999, Mr. Saidov was transferred to the investigation centre no1 in Khudzhand and placed in a collective cell with 16 other detainees; the air circulation was insufficient and the cell was overcrowded. The food consisted exclusively of barley gruel; as her husband suffered from viral hepatitis before his arrest, he could not digest the food provided in the detention centre and he required a special diet, but was unable to obtain one. As result, her husband's stomach was injured and he was obliged to consume only the food transmitted infrequently by his family.

2.10 On 24 December 1999, the Supreme Court found Mr. Saidov guilty of banditism; participation in a criminal organization; usurpation of power with use of violence; public call for forced modification of the constitutional order; illegal acquisition and storing of fire guns and munitions, terrorism and murder, and sentenced him to death. The same day, he was

transferred to death row, and placed in an individual cell measuring one by two meters, with concrete floor with no bed but a thin mattress. The toilet consisted of a bucket in one of the corners. According to the author, her husband, a practicing Muslim, was humiliated to have to pray in such conditions. On 25 June 2000, Mr. Saidov was transferred to Detention Centre SIZO No 1 in Dushanbe, where, allegedly, conditions of detention and quality of food were identical. The author claims that her husband received only every fourth parcel she sent to him through the penitentiary authorities.

2.11 The author states that she and Mr. Saidov's lawyer appealed the Supreme Court decision to the President of the Supreme Court of Tajikistan. The Deputy President of the Supreme Court (and Chairman of the Military Chamber of the same Court) dismissed the appeal on an unspecified date. The mother of Mr. Saidov addressed a request for pardon to the President but received no reply. Mr. Saidov's lawyer introduced a request for pardon to the presidency's Committee for the Defense of the Citizen's Constitutional Rights, but did not receive a reply either.

2.12 On 10 May 2001, the author informed the Committee that her husband was executed on 4 April 2001, despite of the Committee's request for interim measures of protection. On 12 June 2001, she submitted a copy of the death certificate, issued on 18 May 2001, which confirmed that Mr. Saidov passed away on 4 April 2001, without mentioning the cause of death.

The claim

3.1 The author claims that her husband was a victim of violations of his rights under article 7 of the Covenant, as during the investigation, in particular during the two weeks following his arrest, he was tortured by the investigators in order to make him confess, in violation of article 14, paragraph 3 (g). When, in court, he and other accused challenged the voluntary character of the confessions they made during the investigation, the judge, allegedly cut them short, stating that they were inventing things and asking them "tell the truth".

3.2 The author claims that article 9, paragraph 2, was violated in her husband's case, as he was arrested on 25 November 1998 but only officially charged one month later, on 1 January 1999.

3.3 Article 10, paragraph 1, of the Covenant is said to have been violated due to the inhuman conditions of detention of Mr. Saidov in Khudzhand and Dushanbe.

3.4 Article 14, paragraph 1, is said to have been violated, because the judge of the Military Chamber of the Supreme Court conducted the trial in a biased manner and imposed limitations on the access of relatives of the accused to the hearing, as well as denying access to other individuals wishing to assist, thus violating the requirement of publicity of the trial. Although not directly invoked by the author, another issue possibly arises under the above provision, in that Mr. Saidov, a civilian, was sentenced by the Military Chamber of the Supreme Court.

3.5 Mr. Saidov's presumption of innocence, protected by article 14, paragraph 2, is also said to have been violated, because during the investigation, state directed national media constantly broadcast and published material, calling him and his co-accused "criminals", "mutineers", etc, thus contributing to a negative public opinion. Later, during the trial, this resulted in the judge's accusatory approach.

3.6 Article 14, paragraph 3 (b) is said to have been violated, because during the investigation, Mr. Saidov was deprived, de facto, of his right to legal representation, in spite of the fact that he risked a capital verdict. A lawyer was assigned by investigators only during the final stages of the investigation and Mr. Saidov met him only once, allegedly in violation of his right to prepare his defense. The author also claims that article 14, paragraph 3 (d) has been violated, as her husband was not informed of his right to be represented by a lawyer from the moment of his arrest. Finally, during the trial, Mr. Saidov's lawyer was frequently absent.

3.7 Mr. Saidov was tried and found guilty by the Military Chamber of the Supreme Court, whose judgments are not subject to ordinary appeal, in violation of article 14, paragraph 5, of the Covenant. The only possible appeal is an extraordinary one and depends on the discretionary power of the President of the Supreme Court (or his deputies), or the Prosecutor General (or his deputies). The author considers that this system deprived her husband of his

right of appeal, in violation of the principles of equality of arms and adversary proceedings, by giving an unfair advantage to the prosecutor's side. The author adds that even if an extraordinary appeal was to be submitted, takes place, it is always conducted without hearing and would only cover matters of law, contrary to the Committee's jurisprudence³⁸⁰.

3.8 The author contends that the above violations led to a violation of her husband's rights under article 6, paragraphs 1 and 2, as he was sentenced to death after an unfair trial, on the ground of a confession extracted under torture.

3.9 In spite of several reminders addressed to the State party with requests to present its observations on the author's submission³⁸¹, and with requests for clarification of Mr. Saidov's situation, no reply has been received.

State party's failure to respect the Committee's request for interim measures under rule 86

4.1 The author has alleged that the State party breached its obligations under the Optional Protocol by executing her husband despite the fact that a communication had been registered before the Human Rights Committee under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls³⁸² that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

4.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her husband was denied rights under Articles 6, 7, 9, 10 and 14 of the Covenant. Having been notified of the communication, the State party has breached its obligations under the Protocol, by executing the alleged victim before the Committee concluded its consideration and examination and the formulation and communication of its Views. It is particularly inexcusable for the State to having done so after the Committee has acted under rule 86 of its Rules of Procedure, requesting that the State party refrains from doing so.

4.3 The Committee also expresses great concern about the lack of State party's explanation for its action, in spite of several requests made in this relation by the Committee, acting through its Chairman and its Special Rapporteur on New Communications.

4.4 The Committee recalls that interim measures pursuant to rule 86 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the execution of the author's husband undermines the protection of Covenant rights through the Optional Protocol.

³⁸⁰ The author refers to the Committee's Views in the cases of *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, adopted on 6 April 1998.

³⁸¹ The initial rule 86 request was addressed to the State party on 12 January 2001. A Note verbale was sent to the State party on 18 May 2001, requesting information on Mr. Saidov's situation and reiterating the rule 86 request. A letter, signed by the Committee's Chairperson was addressed to the State party on 19 June 2001, with a request for clarification on the non-compliance with the rule 86 request. Finally, on 3 August 2001, a Note verbale was addressed to the State party, requesting it to provide information on the case (what steps were taken by the State to comply with the Committee's rule 86 request, on what grounds Mr. Saidov was executed, and what measures are being taken by the state to guarantee compliance with such requests in future. On 5 December 2002, the State party was invited to provide the above requested information.

³⁸² See *Piandong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000.

Issues and proceedings before the Committee

Committee's decision on admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted on the strength of the material before it. In the absence of any State party's objection in this regard, it considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are satisfied.

5.3 The Committee has noted the author's claims under articles 6, 7, 9, 10, and 14, set out above, and has noted that the author's allegations in relation to the initial stages of Mr. Saidov's investigation relate to a period prior to the entry into force of the Optional Protocol for the State party. The author's case, however, was examined by a court, in first instance, only on 24 December 1999 – i.e. after the entry into force of the Optional Protocol for Tajikistan. In the circumstances, the Committee finds that the alleged violations of the Covenant had or continued to have effects that in themselves constituted possible violations after the entry into force of the Optional Protocol and are therefore admissible, except the allegations under article 9, which do not fall into that category, and therefore are inadmissible under article 1 of the Optional Protocol.

Examination of the merits

6.1 The Human Rights 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, paragraph 1, of the Optional Protocol. It notes that the State party has not, despite the reminders sent to it, provided any replies on either the admissibility or the merits of the communication. The Committee notes that, under article 4, paragraph 2, of the Optional Protocol, a State party is under an obligation to cooperate by submitting to it written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. As the State party has failed to cooperate in that regard, the Committee had no choice but to give the author's allegations their full weight insofar as they have been substantiated.

6.2 With regard to the claim that the author's husband was tortured and threatened following his arrest to make him confess, the Committee notes that the author has provided the names of the officials who beat her husband, using baton and kicks, and has described in some details her husband's resulting injuries. From the documents submitted by the author, it transpires that these allegations were presented to the President of the Supreme Court on 7 April 2000, and that he responded that the allegations had already been examined by the Military Chamber of the Supreme Court and were found to be groundless. The author argues that her husband and his co-accused revoked their initial confessions in court, having been extracted under torture; this challenge to the voluntariness of the confessions was dismissed by the judge. The Committee notes that the State party has failed to indicate how the court investigated these allegations, nor has it provided copies of any medical reports in this respect. In the circumstances, due weight must be given to the author's claim, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 In the light of the above finding and of the fact that Mr. Saidov's conviction was based on his confession obtained under duress, the Committee concludes that article 14, paragraph 3 (g), of the Covenant, was also violated.

6.4 The Committee has taken note of the author's claims under article 10, paragraph 1, of the Covenant, relating to her husband's detention subsequent to the entry into force of the Optional Protocol during the investigation and on death row, due to the lack of medical assistance and the poor conditions of detention as exposed in paragraphs 2.9 and 2.10 above. In the absence of any State party's refutation, once again, due weight must be given to the author's allegations. Accordingly, the Committee concludes that article 10, paragraph 1, has been violated with Mr. Saidov's respect.

6.5 The Committee has noted that the author's husband was unable to appeal his conviction and sentence by way of an ordinary appeal, because the law provides that a review of judgments of the Military Chamber of the Supreme Court is at the discretion of a limited number of high-level judicial officers. Such review, if granted, takes place without a hearing and is allowed on questions of law only. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, as long as the procedure allows for due consideration of the nature of the case³⁸³. In the absence of any explanation from the State party in this regard, the Committee is of the opinion that the above -mentioned review of judgments of the Military Chamber of the Supreme Court, falls short of the requirements of article 14, paragraph 5, of the Covenant, and consequently, that there has been a violation of this provision in Mr. Saidov's case³⁸⁴.

6.6 The author further claimed that her husband's right to be presumed innocent until proved guilty has been violated, due to the extensive and adverse pre-trial coverage by state - directed media which designated the author and his co-charged as criminals, thereby negatively influencing the subsequent court proceedings. In the absence of information or objection from the State party in this respect, the Committee decides that due weight must be given to the author's allegations, and concludes that Mr. Saidov's rights under article 14, paragraph 2, have been violated.

6.7 The Committee has noted the author's claim that her husband's right to a fair trial was violated, inter alia by the fact that the judge conducted the trial in a biased manner and refused even to consider the revocation of the confessions made by Mr. Saidov during the investigation. No explanation was provided by the State party for the reasons of that situation. Therefore, on the basis on the strength of the material before it, the Committee concludes that the facts as submitted before it reveal a violation of Mr. Saidov's rights under article 14, paragraph 1, of the Covenant.

6.8 As to the alleged violation of article 14, paragraph 3 (b), in that the author's husband was legally represented only towards the end of the investigation and not by counsel of his own choice, with no opportunity to consult his representative, and that, contrary to article 14, paragraph 3 (d), Mr. Saidov was not informed of his right to be represented by a lawyer upon arrest, and that his lawyer was frequently absent during the trial, the Committee once more regrets the absence of a relevant State party explanation. It recalls its jurisprudence that, particularly in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer³⁸⁵ at all stages of the proceedings. In the present case, the author's husband faced several charges which carried the death penalty, without any effective legal defence, although a lawyer had been assigned to him by the investigator. It remains unclear from the material before the Committee whether the author or her husband have requested a private lawyer, or have contested the choice of the assigned lawyer. However, and in the absence of any relevant State party explanation on this issue, the Committee reiterates that while article 14, paragraph 3 (d) does not entitle an accused to choose counsel free of charge, steps must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice³⁸⁶. Accordingly, the Committee is of the view that the facts before it reveal a violation of Mr. Saidov's rights under article 14, paragraphs 3 (b) and (d), of the Covenant.

6.9 The Committee recalls³⁸⁷ that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the current case, the sentence of death was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

7. 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

³⁸³ See *Reid v. Jamaica*, Communication No. 355/1989, paragraph 14.3, and *Lumley v. Jamaica*, Communication No. 662/1995, paragraph 7.3.

³⁸⁴ See *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995.

³⁸⁵ See for example *Aliiev v. Ukraine*, Communication 781/1997, *Robinson v. Jamaica*, Communication No. 223/1987, *Brown v. Jamaica*, Communication No. 775/1997.

³⁸⁶ See, inter alia, *Kelly v. Jamaica*, Communication No. 253/1987.

³⁸⁷ See *Conroy Levy v. Jamaica*, Communication No. 719/1996, and *Clarence Marshall v. Jamaica*, Communication No. 730/1996, *Kurbanov v. Tajikistan*, Communication No. 1096/2002.

it disclose a violation of Mr. Saidov's rights under articles 6, 7, 10, paragraph 1, and 14, paragraphs 1, 2, 3 (b), (d), and (g), and 5, of the Covenant.

8. Under article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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 90 days, information about the measures taken to give effect to these Views. The State party is also requested to publish the Committee's Views.

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

UNITED
NATIONS

CCPR



**International covenant
on civil and
political rights**

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CCPR/C/79/D/1096/2002
12 November 2003

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Seventy-ninth session
20 October - 7 November 2003

VIEWS

Communication No. 1096/2002

Submitted by: Mrs. Safarmo Kurbanova (not represented by counsel)

Alleged victim: The author's son, Mr. Abduali Ismatovich Kurbanov

State party: Tajikistan

Date of communication: 16 July 2002 (initial submission)

Document references: Special Rapporteur's rule 86/91 decision, transmitted to the State party on 16 July 2002 (not issued in document form)

Date of adoption of Views: 6 November 2003

On 6 November 2003, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1096/2002. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Seventy-ninth session

concerning

Communication No. 1096/2002*

Submitted by: Mrs. Safarmo Kurbanova (not represented by counsel)

Alleged victim: The author's son, Mr. Abduali Ismatovich Kurbanov

State party: Tajikistan

Date of communication: 16 July 2002 (initial submission)

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

Meeting on 6 November 2003,

Having concluded its consideration of communication No. 1096/2002, submitted to the Human Rights Committee by Safarmo Kurbanova on behalf of her son Abduali Ismatovich Kurbanov 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajssoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1.1 The author of the communication is Mrs. Safarmo Kurbanova, a Tajik citizen born in 1929. She submits the communication on behalf of her son - Abduali Ismatovich Kurbanov, also Tajik citizen, born in 1960 and sentenced to death on 2 November 2001 by the Military Chamber of the Supreme Court of Tajikistan. He is at present awaiting execution in the Detention Centre No. 1 in Dushanbe. The author claims that her son is a victim of violations by Tajikistan³⁸⁸ of articles 6, 7, 9 and 10, as well as paragraphs 1, 3 (a) and (g), and 5 of article 14 of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 14, paragraph 3 (d), of the Covenant, although this provision is not directly invoked. The author is not represented by counsel.

1.2 On 16 July 2002, in accordance with rule 86 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence of Mr. Kurbanov while his case is pending before the Committee. No reply has been received from the State party in this regard.

The facts as presented by the author

2.1 According to the author, Mr. Kurbanov went to the police on 5 May 2001 to testify as a witness. He was detained for seven days in the building of the Criminal Investigation Department of the Ministry of the Interior, where according to the author he was tortured. Only on 12 May 2001, a formal criminal charge of fraud was made against him, an arrest warrant was issued for him, and he was transferred to an investigation detention centre. He was forced to sign a declaration that he renounced the assistance of a lawyer.

2.2 On 9 June 2001, a criminal investigation was opened in relation to the triple murder of Firuz and Fayz Ashurov and D. Ortikov, which had occurred in Dushanbe on 29 April 2001. In addition to the initial fraud charge, the author's son was, on 30 July 2001, charged with the murders and with illegal possession of firearms³⁸⁹. The author claims that her son was tortured before he accepted to write down his confession under duress; during her visits, she noted scars on her son's neck and head, and as well as broken ribs. She adds that one of the torturers – investigation officer Rakhimov – was charged in August 2001 with having received bribes and with abuse of power in 13 other cases also related to the use of torture; he was later sentenced to 5 years and six months of imprisonment.

2.3 The investigation was concluded on 4 August 2001, and the case was sent to court. On 2 November 2001, the Military Chamber of the Supreme Court sentenced the author's son to death (with confiscation of his property). On 18 December 2001 the judgment was confirmed by the Supreme Court, following extraordinary appeal proceedings.

2.4 The judgment of 2 November 2001 by the Military Chamber of the Supreme Court was submitted to the Committee by the author in Tajik; an unofficial English translation was provided subsequently. The judgment includes neither an account of the prosecution's case nor a transcript of the actual trial. It begins with a description of the facts as established by the court, then moves to the testimonies of the three accused persons and some witnesses, and finally addresses the issues of the conviction and sentencing. It does not transpire from this judgment how the Military Chamber of the Supreme Court was constituted, e.g. whether one or more of its judges were military officers. However, it transpires that Mr. Kurbanov was tried together with one Mr. Ismoil and Mr. Nazmudinov, who was a major in the service of the Ministry of National Security. According to the facts established by the court, Mr. Kurbanov killed, on 29 April 2001 three persons in the car of one of the victims, using an unregistered pistol. Later, he hid the bodies by burying them in the immediate vicinity of his garage and left the pistol with Mr. Ismoil, after telling him that he had killed three persons. On 8 May 2001, Mr. Ismoil delivered the pistol to Mr. Nazmedinov who in turn failed to deliver it to the authorities. Instead, the gun was found on 12 June 2001 in Mr. Nazmedinov's apartment.

2.5 According to the same judgment, Mr. Kurbanov confessed to the killings and admitted to burying his own clothes and the car's licence plate together with the bodies. Neither the two co-accused nor any of the witnesses heard by the court testified they had seen Kurbanov commit the killings. One witness, Mr. Hamid, testified that he learned on 5 May 2001 that

³⁸⁸ The Optional Protocol entered into force for Tajikistan on 4 April 1999.

³⁸⁹ It transpires from documents later submitted by the State party that the author's son was on 11 June 2001 initially informed that he was suspected of the murders.

Kurbanov had been detained for fraud and that he had later on directed the investigators to the site where Kurbanov was building a garage. The judgment refers to Hamid saying that "he was present when the three bodies of the dead were dug out from the pit of the garage and found out that the murderer was Kurbanov." Another witness, Mr. Mizrobov, testified that he was present on 5 May 2001 when Kurbanov was taken to the authorities. He was also present on 8 or 9 June 2001 when the bodies of the three victims, "Kurbanov's clothes" and the car license plate were found. The judgment mentions that there was ballistic evidence linking the pistol found on 12 June 2001 in Mr. Nazmedinov's apartment to the crime. However, no forensic evidence linking Mr. Kurbanov to the clothes found with the bodies is mentioned, and only the confessions of the three co-defendants linked Mr. Kurbanov to the gun.

2.6 At the end of the trial, Mr. Kurbanov was sentenced to death and confiscation of his property, whereas Mr. Ismoil and Mr. Nazmedinov were both sentenced to four years' imprisonment, on account of their involvement with the crime weapon, and then immediately pardoned and released by the same court.

The claim

3.1 The author claims that her son was detained for seven days without arrest warrant. During this time, he was unable to see his family or a lawyer. The fact that her son was illegally arrested and detained for one week without being promptly informed of the charges against him, constitutes, according to the author, a violation of article 9, paragraphs 1 and 2, of the Covenant.

3.2 Article 7 and article 14, paragraph 3 (g), of the Covenant are said to be violated as Mr. Kurbanov allegedly was subjected to torture and beatings by means of kicks and with batons, strangulation, torture with electricity during the investigation, to make him confess. During a pre-trial cross-examination with the father of one of the murder victims – Mr. Ortikov – the author's son was beaten by the father in presence of the investigators.

3.3 The author contends that article 14, paragraph 1, of the Covenant was violated, as the court proceedings were partial. She alleges that the court proceedings were unfair from the beginning, as the families of the victims exercised pressure on the judges. All requests of the defence were rejected.

3.4 The author claims that when her son was charged with murder, she requested, due to her financial situation, a lawyer be assigned to him ex officio, but she was informed that the law provided no such possibility.

3.5 The author also claims that according to the case file, a lawyer assisted her son as of 20 June 2001, but in fact she hired a lawyer for her son only in July 2001. She adds that the lawyer visited her son only two or three times during the investigation, and this was always in the presence of an investigator. After the judgment, her son was unable to see the lawyer and benefit from his assistance. According to the author, the lawyer failed to appeal for cassation. Her son had no opportunity to consult the court's judgment, as no interpreter was provided to him. Mr. Kurbanov prepared a cassation appeal himself, but this was denied, because the deadline for filing the appeal had passed. The author's own cassation appeal was denied on the ground that she was not a party to the criminal case. The extraordinary appeal proceedings which her son availed himself of with the assistance of his lawyer were unsuccessful; they do not, according to author, provide an effective means of judicial protection. Article 14, paragraph 5, of the Covenant allegedly was violated because the author's son was deprived of his right to appeal.

3.6 During the investigation, the author's son was not assisted by an interpreter, nor was he offered a qualified interpreter during the trial, despite the fact that he is a Russian speaker and some of the court documents were in Tajik. This is said to be in violation of article 14, paragraph 3 (f), of the Covenant.

3.7 The author's son is said to be detained in inhuman conditions. The cells have no water; toilets are in a corner of the cells, but they cannot be used because of the lack of water. In winter, the cells are very cold, and in summer extremely hot. Air circulation is limited because of the tiny size of the cells and of the windows. They are infested with insects because of the lack of hygiene. Prisoners are allowed to leave their cell for a walk only for half an hour per day. These conditions are said to amount to a violation of article 10, of the Covenant.

3.8 Finally, the author claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, because the violations of article 14 resulted in an illegal and unfair death sentence, which was pronounced by an incompetent tribunal.

State party's submissions on the admissibility and merits.

4.1 By Note verbale of 16 September 2002, the State party observes that pursuant to information from the Governmental Commission on implementation of the international obligations of Tajikistan in the field of human rights, Mr. Kurbanov was sentenced to death by the Military Chamber of the Supreme Court on 2 November 2001. The criminal proceedings against the author's son were initiated on 12 May 2001. He was ordered arrested on the same day, and he signed a written statement that he did not need legal representation during the preliminary investigation.

4.2 The State party contends that on 29 April 2001, Mr. Kurbanov killed three persons, and that on 9 June 2001 a criminal investigation was opened in this regard. The State party points out that Mr. Kurbanov provided a written and full confession of his guilt, and explained the circumstances of the crime in presence of the lawyer, Mr. Nizomov. In the State party's view, the author's allegations about the use of illegal methods of interrogation including violence and torture against her son should be considered unsubstantiated, as neither during the investigation nor in court, were such allegations raised by Mr. Kurbanov.

4.3 The State party also dismisses as unsubstantiated the author's contention that her son was not provided with an interpreter during the investigation and during the court proceedings. Mr. Kurbanov is Tajik, and upon closure of the investigation, when he consulted the case file, he declared that he did not need an interpreter. Court proceedings were conducted in the presence and with the participation of an interpreter.

4.4 The State party finally observes that the Supreme Court noted that in his cassation appeal, the author's son did not challenge the judgment of the court nor the actions of the court and the investigators, but asked for commutation of the death sentence to a long prison term. The State party concludes that on the basis of its investigations into the case, no violations of the Covenant occurred.

Author's comments on State party's submission

5.1 By letters of 25 November 2002, 13 January, 27 March, and 21 July 2003, the author presented further information. She reaffirms that her son was arrested on 5 May 2001 at around 3 pm when he voluntarily went to the police to testify as a witness. On 7 May, the author complained in writing to the Office of the Prosecutor-General; that same day, officers from that Office went to the Ministry of the Interior, to inquire about the whereabouts of her son. They were unable to find him because, as he had been beaten and was covered with blood, he was hidden in a locked office, in the presence of the policeman who had beaten him.

5.2 The author notes that the State party's submission includes copies of interrogation record sheets, with a specific field reserved for the need for interpretation, where it is mentioned that Mr. Kurbanov does not need interpretation, and that he would make his deposition in Russian. For the author, this proves that her son's mother tongue is Russian. The investigation was conducted in Russian. Some of the proceedings, such as cross-examination, were however held in Tajik; in spite of her son's request for interpretation, the investigator refused to provide for it, explaining that Mr. Kurbanov was a Tajik national and was presumed to be proficient in Tajik. The trial was also held in Tajik. Some of the hearings benefited from interpretation, but according to the author, the interpreter was unqualified, and it was often difficult to understand him.

5.3 As to the authenticity of her son's written confession, the author states that her son does not deny the authenticity of his signature on the record sheets, but that he claims to have signed them under torture. The author reiterates that her son bears marks of torture on his body, and that this was brought to the attention of the State party on several occasions.

5.4 As Mr. Kurbanov was provided with services of a lawyer only on 23 July 2001, all proceedings during this period (including interrogations), were conducted without any legal representation. This facilitated the torture of her son, and he could not complain, *inter alia*, because he did not know to whom to complain.

5.5 The author reiterates that upon his arrest, her son was not promptly been informed of the reasons for his arrest, nor later, of the sentence he risked for the crime he had been charged with.

5.6 Between 5 and 12 May 2001, the author's son was detained in the building of the Criminal Investigation Department and was prevented from receiving food and items brought to him

5.7 Regarding the State party's argument that Mr. Kurbanov is Tajik and should be presumed to master Tajik the author notes that her son speaks only basic Tajik because his schooling was in Russian, moreover he had lived in Russia for a long time. He is not in a position to understand legal terminology and literary phrases in Tajik. For that reason he could not understand the charges or the sentence during the court procedures.

5.8 The author acknowledges that no specific complaint about the use of torture was made, but affirms that this allegation was raised in court and was also conveyed to numerous governmental and non-governmental organizations. Thus, in the author's opinion, the authorities were fully aware of the allegations relating to her son's torture. Yet, no inquiry was no initiated.

5.9 The author reiterates that the entire investigation in her son's case was partial and not objective. The case file initially contained a complaint about fraud from the wife of one Khaidar Komilov. The investigators, however, removed all reference to that person at latter stage, calling him the "unknown Khaidar". According to the author, by doing so, the investigators eliminated from the proceedings a potentially important witness.

5.10 In her letter of 21 July 2003, the author submits that because of the anguish arising out of the prospect of his execution, her son's psychological condition has deteriorated significantly.

Issues and proceedings before the Committee

Decision on admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to the requirement of exhaustion of domestic remedies, the Committee notes that although the author failed to file a normal appeal after conviction, his case was nevertheless reviewed through extraordinary appeal by the Supreme Court and that the State party has not challenged the admissibility of the communication on this ground. It therefore considers that the author has met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 With regard to the author's allegation under article 14, paragraph 1, that the trial was partial due to the pressure exerted by the audience, the Committee considers that the author has not substantiated this claim, for the purposes of admissibility. Hence, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 As to the author's claims that her son was denied the assistance of a lawyer during the pre-trial investigation and that even at later stages the assistance of his lawyer remained limited, the Committee notes that these allegations could raise issues under article 14, paragraphs 3 (b) and (d), and recalls its jurisprudence that, particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a lawyer³⁹⁰ at all stages of the proceedings. However, the Committee notes that the author's son was assisted by a privately hired lawyer from 23 July 2001 onwards, including the actual trial and the extraordinary appeal procedure, and that the author has not given any date for the so-called cross-examination arranged as a part of the pre-trial investigation. Furthermore, the

³⁹⁰ See for example *Aliiev v. Ukraine*, Communication 781/1997, *Robinson v. Jamaica*, Communication No. 223/1987 and *Brown v. Jamaica*, Communication No. 775/1997.

Committee notes that although the author might have been suspected of the murders since the discovery of the bodies, he was informed of his status as a suspect on 11 June 2001 and formally charged with the murders on 30 July 2001, i.e. at a time when he already was assisted by a lawyer. Even though the Committee will have to address on the merits the conduct of the State party's authorities under article 9, paragraph 2, and article 14, paragraph 3 (a), it considers in the circumstances, that no issue under article 14, paragraph 3 (b) and (d) has been substantiated, for the purposes of admissibility.

6.6 Similarly, the Committee considers that the author has not substantiated, for purposes of admissibility, that article 14, paragraph 3 (f) was violated due to the limitations on, and the insufficient quality of, interpretation provided to her son. Noting, in particular, that the presence of an interpreter appears from the judgment of 2 November 2001, the Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol.

6.7 As to the author's claim that her son was denied the right of appeal, the Committee notes that Mr. Kurbanov was represented by privately obtained counsel, who did not file a regular cassation appeal. It is not clear why this was not done, but as a result, Mr. Kurbanov's conviction could only be reviewed by way of an extraordinary appeal. In these particular circumstances, the Committee considers that although the review might have been more limited than in normal appeal proceedings, the author has failed to substantiate, for purposes of admissibility, her claim under article 14, paragraph 5. Accordingly, this part of the communication is inadmissible under article 2, of the Optional Protocol.

6.8 The Committee considers that the remainder of the author's claims have been sufficiently substantiated for purposes of admissibility, and proceeds to their examination on the merits.

Examination of the merits

7.1 The Human Rights 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, paragraph 1, of the Optional Protocol.

7.2 The Committee has taken note of the author's claim that her son was detained on a Saturday (5 May 2001), and detained for seven days without a charge. To support her claim, she provides a copy of the police register which displays a record entered on 7 May 2001 relating to her son's arrest, allegedly for fraud. She filed a complaint about the allegedly illegal detention of her son with the Office of the Procurator General on the same day. Furthermore, the Committee notes that according to the judgment of 2 November 2001 by the Military Chamber of the Supreme Court, the author was detained on 5 May 2001. This information is not refuted by the State party's contention that an arrest warrant was issued on 12 May 2001. In the absence of any further explanations from the State party, the Committee concludes that Mr. Kurbanov was detained for seven days without an arrest warrant and without being brought before a judge. The Committee concludes that his rights under article 9, paragraphs 2 and 3, of the Covenant have been violated.

7.3. Furthermore, the documents submitted by the State party show that Mr. Kurbanov was, after being detained since 5 May 2001 on other grounds, informed on 11 June 2001 that he was suspected of the killings of 29 April 2001 but charged with these crimes only on 30 July 2001. During his detention from 5 May 2001 onwards, he was, except for the last week starting on 23 July 2001, without the assistance of a lawyer. The Committee takes the view that the delay in presenting the charges to the detained author and in securing him legal assistance affected the possibilities of Mr. Kurbanov to defend himself, in a manner that constitutes a violation of article 14, paragraph 3 (a), of the Covenant.

7.4 The Committee has noted the author's fairly detailed description of beatings and other ill-treatment that her son was subjected to. She has furthermore identified by name some of the individuals alleged to have been responsible for her son's ill-treatment. In reply, the State party has confined itself to stating that these allegations were neither raised during the investigation nor in court. The Committee recalls³⁹¹, with regard to the burden of proof, that this cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. Further, the mere fact that no allegation of torture was made in the domestic appeal proceedings cannot as such be held

³⁹¹ See, for example, Communication No. 161/1983, *Rubio v. Colombia*.

against the alleged victim if it is proposed, as in the present case, that such an allegation was in fact made during the actual trial but was neither recorded nor acted upon. In the light of the details given by the author on the alleged ill-treatment, the unavailability of a trial transcript and the absence of any further explanations from the State party, due weight must be given to the author's allegations. Noting in particular that the State party has failed to investigate the author's allegations, which were brought to the State party's authorities' attention, the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

7.5 In the light of the above finding and the fact that the author's conviction was based on his confession obtained under duress, the Committee concludes that there was also a violation of article 14, paragraph 3 (g), of the Covenant.

7.6 As to the author's claim that her son's rights under article 14, paragraph 1 were violated through a death sentence pronounced by an incompetent tribunal, the Committee notes that the State party has neither addressed this claim nor provided any explanation as to why the trial was conducted, at first instance, by the Military Chamber of the Supreme Court. In the absence of any information by the State party to justify a trial before a military court, the Committee considers that the trial and death sentence against the author's son, who is a civilian, did not meet the requirements of article 14, paragraph 1.

7.7 The Committee recalls³⁹² that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the current case, the sentence of death was passed in violation of the right to a fair trial as set out in article 14 of the Covenant, and thus also in breach of article 6.

7.8 The State party has not provided any explanations in response to the author's fairly detailed allegations of the author's son's condition of detention after conviction being in breach of article 10 of the Covenant. In the absence of any explanation from the State party, due weight must be given to the author's allegations according to which her son's cell has no water, is very cold in the winter and hot in the summer, has inadequate ventilation and is infested with insects, and that the author's son is allowed to leave his cell only for half an hour a day. With reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee finds, that the conditions as described amount to a violation of article 10, paragraph 1, in respect of the author's son.

8. 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 rights of Mr. Kurbanov under article 7, article 9, paragraphs 2 and 3, article 10, article 14, paragraph 1 and paragraph 3 (a) and (g), and of article 6 of the Covenant.

9. Under article 2, paragraph 3 (a), of the Covenant, the author's son is entitled to an effective remedy entailing compensation and a new trial before an ordinary court and with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations 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 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 90 days, information about the measures taken to give effect to these 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.]

³⁹² See *Conroy Levy v. Jamaica*, communication No. 719/1996, and *Clarence Marshall v. Jamaica*, communication No. 730/1996.



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MINBOEV V TAJIKISTAN

**Human Rights Committee
Ninety-eighth session
8 to 26 March 2010**

Decision

Communication No. 1174/2003

<u>Submitted by:</u>	Bakhrullo Minboev (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Tajikistan
<u>Date of the communication:</u>	20 May 2003 (initial submission)
<u>Documentation references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 21 May 2003 (not issued in document form)
<u>Date of present decision:</u>	19 March 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Criminal procedure violations in a death penalty case.
<i>Procedural issues:</i>	Non-cooperation by the State party, evaluation of facts and evidence by courts, insufficient substantiation of allegations.
<i>Substantive issues:</i>	Unlawful detention, unfair trial, access to a lawyer of own choice, right to obtain attendance and examination of witnesses.
<i>Articles of the Covenant:</i>	6, paragraphs 1 and 2; 9, paragraphs 1 and 2; and 14, paragraph 3 (b and e).
<i>Articles of the Optional Protocol:</i>	2

[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)

concerning

Communication No. 1174/2003**

Submitted by: Bakhrullo Minboev (not represented by counsel)

Alleged victim: The author

State party: Tajikistan

Date of the communication: 20 May 2003 (initial submission)

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

Meeting on 19 March 2010,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. Bakhrullo Minboev, a citizen of Tajikistan, currently serving a prison sentence in Tajikistan, who claims to be the victim of violations by the State party of his rights under article 6, paragraphs 1 and 2; article 9, paragraph 1 and 2; and article 14, paragraphs 1 and 3 (b and e), of the Covenant. The author is not represented.

1.2 On 21 May 2003, pursuant to rule 92 of its Rules of Procedure, the Human Rights Committee, acting through the Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the death sentence against the author, while his case is under consideration by the Committee.

The alleged facts as presented by the author

2.1 On 1 November 2000, the author was detained on suspicion of theft. He was not presented with charges until 19 November 2000. During interrogations, the author confessed that he committed a murder in October 1997. At that time, he was working for the Ministry of Interior, and was asked by his chief to kill one of the murder victims. He was threatened that he and his family would be killed if he did not carry out the murder. On 5 November 1997, when he was in the same car as the victims, he fired a shot, but the bullet went through the intended victim's head and hit also a man sitting next to him. Both men died.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

2.2 During investigation, the author was refused a lawyer of his choice. He had no legal defense for a period of three months, although under the Criminal Procedure Code legal assistance is compulsory in cases involving the death penalty starting from the pre-trial investigation. Later, he was assigned a public lawyer, who was not licensed for law practice. In addition, the order assigning this lawyer was invalid, as it was issued on 20 January 2000, while the author was detained only on 7 November 2000.

2.3 On 9 April 2001, he was convicted of premeditated murder of two or more persons and sentenced to death. During the trial, the author was able to have the lawyer of his choice, who requested forensic tests to be made to show that both deaths were caused by one bullet. The request was dismissed by the court. The author confessed having committed the murder, but added that only one of the deaths was caused by premeditated murder. The second person was killed accidentally. The court ignored this claim as well as the request by the defence to invite additional witnesses.

2.4 The author's cassation appeal was dismissed by the Cassation Court. However, an appeal to the Presidium of the Supreme Court under the supervisory review procedure resulted in the judgment being overturned and the case sent back for retrial on 11 January 2002. This decision was based on the following procedural flaws: 1) Lack of legal assistance of the author's own choosing; 2) The author's identity had not been fully established; and 3) failure to investigate a possible accidental death of the second victim. The case was sent to the same investigator who had conducted the original investigation and who was biased, and had his own interest in the outcome of the second investigation. Again, the lawyer selected by the author for his defense was not accepted by the judge, who assigned another lawyer. This lawyer allegedly signed procedural documents without the author's knowledge and failed to inform him of his right to study the investigation materials.

2.5 During the second trial, it was shown that one bullet killed both victims. However, the court ignored this fact and again sentenced the author to death on 24 September 2002.

2.6 The author was not allowed to be present during the review of his case at the cassation level, although, under the Tajik Criminal Procedure Code, he was entitled to it.

2.7 His cassation appeal of 15 November 2002 was declined by the Criminal Collegium of the Supreme Court. Similarly, his application for judicial review to the Chair of the Supreme Court was also dismissed. The author submits that the same matter is not being examined under another international procedure of investigation or settlement and that he has exhausted all available domestic remedies.

2.8 In his submission on 12 July 2003, the author adds that his mental health condition has deteriorated due to the stress of awaiting his execution.

The complaint

3.1 The author invokes article 6, paragraphs 1 and 2, as he claims that his right to life was violated due to the unfair judgement issued by an incompetent court;

3.2 The author claims that his rights under article 9, paragraphs 1 and 2, were violated as his detention was unlawful and

he was not informed about the charges against him for more than a week.

3.3 The author invokes article 14, paragraph 1, as he claims that the court was biased because it ignored his testimonies and the results of forensic examinations.

3.4 The author claims that his rights under article 14, paragraph 3 (b), of the Covenant were violated, as he had no legal defense for a period of three months, and he was not able to be represented by the lawyer of his own choice. Furthermore, the assigned lawyer was not licensed for law practice and he was not able to communicate with him.

3.5 The author also invokes article 14, paragraph 3 (e), as the court ignored the defence's request to invite additional witnesses.

State party's submission and failure to address questions of admissibility and merits

4.1 On 13 October 2003, the State party submitted that the author was pardoned on 4 September 2003 and his death sentence was commuted to 20 years' imprisonment.

4.2 The State party was invited to present its observations on the admissibility and merits of the communication in May 2003. A reminder was sent in this respect in July 2005. The Committee notes that no information has been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they have been properly substantiated.

Author's failure to provide additional information

5. The author, whose present whereabouts are unknown, did not provide any comments to the submission by the State party, despite reminders sent. The last communication from the author was received on 12 July 2003. Repeated requests as to his wish to continue his case, which were sent in 2005, 2006 and 2007, remain unanswered.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the author's allegations that the trial court was unfair and biased, as it ignored his testimonies and the results of forensic examinations violating article 14, paragraph 1. It notes, however, that these claims largely relate to the evaluation of facts and evidence by the State party's courts. The Committee refers

to its jurisprudence³⁹³ and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice. The material before the Committee does not reveal that the conduct of the trial suffered from any such defects. Accordingly, the Committee considers that the author has not substantiated these allegations for purposes of admissibility and that the claims are thus inadmissible pursuant to article 2 of the Optional Protocol.

6.3 The Committee also notes the author's allegation of unlawful detention and not being informed of the charges against him for more than a week under article 9, paragraphs 1 and 2, of the Covenant. It further notes the author's allegations under article 14, paragraph 3 (b and e), that he had no legal defense for a period of three months; he was not able to communicate with the lawyer assigned to him; and he was not represented by the lawyer of his own choice, while the assigned lawyer was not licensed for law practice. The Committee notes, however, that the author did not substantiate these allegations in his initial communication and The Committee was not able to re-establish contact with the author to obtain further information despite numerous attempts. In these circumstances, the Committee considers that the author's claims are not sufficiently substantiated for purposes of admissibility and that the claims are thus inadmissible pursuant to article 2 of the Optional Protocol.

6.4 With regard to the author's allegations under article 6, paragraphs 1 and 2, the Committee notes the State party's submission that the author's death sentence was commuted to 20 years' imprisonment. In light of this, and given the Committee's conclusion on the absence of a violation of the author's rights under article 14 of the Covenant in the present case, the Committee considers that this part of the communication is also inadmissible, under article 2 of the Optional Protocol.

7. The Committee therefore decides:

a) That the communication is inadmissible under article 2 of the Optional Protocol;

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

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

³⁹³ See for example: Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995 and *P.K. v. Canada*, inadmissibility decision of 20 March 2007. Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*; No. 886/1999, *Bondarenko v. Belarus*; No. 1138/2002, *Arenz et al. v. Germany*, admissibility decision.

R.A. v TAJIKISTAN

Distr.
RESTRICTED*

CCPR/C/97/DR/1240/2004
6 October 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety- seventh session
12-30 October 2009

5 RECOMMENDATION

6 Communication No. 1240/2004

<u>Submitted by:</u>	Mr. Saimurod Azizov (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Rakhmat Azizov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	6 January 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 January 2004 (not issued in document form)
<u>Date of adoption of decision:</u>	... October 2009

* All persons handling this document are requested to respect and observe its confidential nature.

Subject matter: death sentence after an unfair trial with use of torture during investigation.

Procedural issues: level of substantiation of claim.

Substantive issue: forced confessions, bias of tribunals; presumption of innocence.

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

Article of the Covenant: 6; 7; 14, paragraph 1.

The Working Group of the Human Rights Committee recommends that the Committee consider for adoption the annexed draft as the Committee's decision on admissibility.

7 [ANNEX]

ANNEX

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

Ninety-seventh session

concerning

Communication No. 1240/2004

Submitted by: Mr. Saimurod Azizov (not represented by
counsel)

Alleged victim: The author's son, Rakhmat Azizov

State party: Tajikistan

Date of communication: 6 January 2004 (initial submission)

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

Meeting on ... October 2009,

Adopts the following:

8 DECISION ON ADMISSIBILITY

[Note: Explanatory footnotes in brackets will be deleted from the text of the final decision.]

1.1 The author of the communication is Mr. Saimurod Azozov, a Tajik national born in 1937. He claims that his son, Rakhmat Azizov, also a Tajik born in 1983, who at the time of the submission of the communication was detained on death row³⁹⁴, is a victim of violations of his rights under article 6, paragraphs 1 and 2; article 7; and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The author is unrepresented by counsel. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 When registering the communication on 16 January 2004, 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 carry out Mr. Rakhmat Azizov's execution pending the consideration of his case. By Note Verbale of 4 May 2004, the State party informed the Committee that Mr. Azizov had been granted pardon, and his death sentence had been commuted to a long prison term³⁹⁵.

³⁹⁴ Following a death sentence imposed on 13 August 2003 by the Supreme Court of Tajikistan.

³⁹⁵ From a subsequent submission by the State party, it transpires that Mr. Azizov's death sentence was commuted to 25 years of imprisonment.

The facts as submitted by the author

2.1 During a theft committed on 13 October 2001 in the premises of the company « Ora international » in Dushanbe, a guard was killed. On 14 October 2001, three individuals, including the author's son, were arrested in this connection and were informed that they were suspected of theft, robbery and murder.

2.2 According to the author, at the beginning of the investigation his son confessed his participation in the theft, but he denied any involvement in the murder of the guard. He had affirmed that he and his co-accused had only planned to commit the theft, and that the guard was killed by his two accomplices when he was in another part of the building. The police however, charged him with murder.

2.3 The author claims that the principle of presumption of innocence was violated in respect to his son. On 17 October 2002, the later was shown in a TV programme called "VKD soobshchaet" ("The Ministry of Internal Affairs informs"), as one of the three criminals, responsible for a murder and theft, that had been arrested. This was done without his son's consent, and, according to the author, was in violation of the Criminal Procedure Code.

2.4 The author further claims that during the preliminary investigation, his son was subjected to torture. While in the premises of the Frunze district department of the Ministry of Internal Affairs in Dushanbe, immediately after his arrest, his son was asked by the police officers to produce written confessions. He did so, and the police officers left the room. They returned shortly afterwards and started beating him. Later, they asked him to write new confessions. The author affirms that, as a result of the beatings, his son wrote down what the officers dictated to him.

2.5 Once the investigation was completed, the author's son and his lawyer were given the opportunity to examine the case file. According to the documents, the author's son was charged only with murder and theft. In court, however, when the presiding judge was reading the charges, it transpired that his son was also charged with a count of involvement of minors into criminal activities (article 165 of the Criminal Code of Tajikistan). Following an objection by the lawyer of Mr. Azizov, the case was sent back for further investigation. Afterwards, the author's son was officially charged under this additional count.

2.6 The author contends that during the trial, the judges acted in a biased and unfair manner. Allegedly, they ignored some depositions of defence witnesses and the statements of the accused. For example, the two other co-accused repeated several times that the author's son was not present during the murder and did not participate in the beatings of the guard. The court ignored their statements and sentenced the author's son and one of his co-accused to death.

2.7 The lawyer of the author's son filed an appeal to the appeal body of the Supreme Court. On an unspecified date, the appeal body rejected his claim and confirmed the sentence.

The complaint

3. The author contends that the facts as presented, reveal a violation of his son's rights under article 7, as he was tortured in order to confess guilty; article 14, paragraph 1, as the court was partial and ignored certain witnesses' testimonies; and article 6, paragraphs 1 and 2, given that his son has been imposed a death sentence following a trial that did not meet the basic criteria of fairness.

State party's observations

4.1 The State party presented its observations on the merits of the communication, on 1 March 2006, in the form of two separate submissions prepared by the Supreme Court and the Office of the Prosecutor General of Tajikistan.

4.2 The Supreme Court recalls the facts of the case: the author's son entered in a preliminary agreement with one D. and one A., both then minors, to commit a theft of an important sum of money contained in the firm where he worked, "ORA International". In the morning of 13 October 2002, he and his accomplices went to the company's premises. There, the author's son suggested to the guard, S., to take a lunch break and proposed to replace him during his absence. When the guard left, the author's son and his accomplices entered the

building and started cutting the company's safe with an electric device. Inside the safe, they found 6202 US dollars which the author's son divided among them. Following this, they decided to kill the guard in order to conceal the theft. When the guard returned, at around 1 p.m., the author's son caught him from behind, and A. struck him on the head using a metal tube. The guard fell, and D. continued to strike him on the head with the tube. The author's son and D. gave additional strokes. The guard died as a result of his injuries.

4.3 According to the Supreme Court, the guilt of the author's son was established not only by his confessions during the preliminary investigation, which were confirmed partly by him in court, but also by the depositions of his co-accused, the testimonies of several witnesses, reports on the examination of the crime scene, evidence seized, medical forensic expert's conclusions, biological expert's conclusions, as well as other evidence examined in court.

4.4 As to the author's claims in the present communication, the Supreme Court notes, first, in respect to confessions that were allegedly obtained under coercion during the preliminary investigation, that Mr. Rakhmat Azizov was interrogated on 19 October and 27 November 2002. On those two occasions, he fully admitted his involvement in the murder, in presence of his privately hired lawyers M. and U., in conditions that were excluding any form of coercion. The Supreme Court notes that neither the author's son nor his lawyers have ever complained throughout the investigation about the use of torture or other forms of inhuman or degrading treatment. Furthermore, the criminal case file does not contain any record in this respect.

4.5 The Supreme Court further rejects as groundless the author's allegations that the court was biased and ignored witnesses' testimonies. It contends that during the first meeting of the trial court, six witnesses testified in court. Each testimony was given due legal assessment and served as basis to conclude that the accused was guilty.

4.6 As to the author's allegations in respect of the broadcast "The Ministry of Internal Affairs informs", the Supreme Court affirms that the fact that in a TV broadcast it was affirmed that the author's son was a criminal does not mean that he really was one. The author's son could only be recognised as a criminal by a court sentence.

4.7 As to the author's allegations that his son was not informed of his charges under article 165 of the Criminal Code, the Supreme Court affirms that the author's son was indeed charged under this provision on 27 November 2002, and this count was maintained following additional inquiries, on 28 June 2003.

4.8 The Supreme Court concludes that in light of the above, it does not believe that the rights of Mr. Rakhmat Azizov under the Covenant have been violated.

4.9 In its submission, the General Prosecution Office also recalls extensively the facts and the proceedings of the case. It contends that the criminal responsibility of the author's son was grounded. It also notes that neither the author's son nor his lawyers ever complained, during the investigation or in court, about any use of unlawful methods of investigation by officials. The legal qualification of the son of the acts committed by the author's son was correct. No violation of the criminal procedure legislation occurred during the examination of the case in court.

Author's comments on the State party's submission

8.1 The author presented his comments on the State party's submission on 6 July 2009³⁹⁶. He reiterates that the investigators forced his son to confess guilt in the murder. According to him, in their replies, neither the Supreme Court nor the General Prosecutor's Office refute his claim that his son was forced to confess his guilt of the murder. Even if during the investigation his son confessed in the presence of a lawyer, his confessions were obtained while he was in custody, and the State party has not presented any evidence to show that his son was not subjected to coercion. According to the author, a State party to the Covenant has a responsibility to investigate acts of torture, but in the present case no thorough investigation took place. According to the author, the fact that neither his son nor his lawyer ever complained about torture does not mean that no torture did take place.

[³⁹⁶ The author explains that he could not present his comments earlier, as he was hospitalized for a long period of time.]

8.2 The author finally explains that during the TV broadcast of 17 October 2002, his son and his co-accused were not designated as suspects but as criminals who had committed murder and theft.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

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

6.3 The Committee notes the author's claim that the investigators forced his son to confess his guilt in a murder, in violation of article 7 of the Covenant. The State party has denied these allegations as groundless, and pointed out that no such allegations were ever formulated by the author's son or by his defence lawyers during the preliminary investigation or in court. In the absence of any other pertinent information on file in this respect, including a description of the alleged acts of ill-treatment or torture and of those who allegedly inflicted them, or any medical records in this regard, and in absence of any explanation from the author as to why these allegations were not raised before the competent authorities at the time, the Committee concludes that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The author has also claimed, in general terms, violations of article 14, paragraph 1, as his son's trial allegedly comported a number of irregularities, the court failed to take into consideration a number of evidence and testimonies and refused to call a number of witnesses. The Committee notes that the State party has replied that no procedural violations of the rights of the author's son have occurred in the present case. It further notes that the author's allegations lack in precision and tend to challenge mainly the manner in which the courts accepted and assessed evidence. The Committee reiterates its jurisprudence³⁹⁷ that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be demonstrated that the evaluation was clearly arbitrary or amounted to a denial of justice. In the absence of any other pertinent information on file in this respect, the Committee considers that these particular allegations have been insufficiently substantiated, for purposes of admissibility, and, accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The author has also alleged that his son's presumption of innocence was violated, as he was portrayed as a criminal in a TV broadcast, guilty of theft and murder. The Committee notes that nothing in the case file suggests that this allegation was ever raised in court. In the circumstances, and in the absence of any other pertinent information on file, the Committee decides that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

6.6 In light of the above findings, the Committee does not consider it necessary to examine separately the author's remaining allegations under article 6 of the Covenant.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the author.

³⁹⁷ Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision of 3 April 1995, paragraph 6.2.

[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.]

ANNEX 1

United Nations

CCPR/C/3/Rev.11*



**International Covenant on
Civil and Political Rights**

Distr.: General

9 January 2019

Original: English

Human Rights Committee

Rules of procedure of the Human Rights Committee**

*

Reissued for technical reasons on 27 March 2019.

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Provisional rules of procedure were initially adopted by the Committee at its first and second sessions and subsequently amended at its third, seventh and thirty-sixth sessions. At its 918th meeting, on 26 July 1989, the Committee decided to make its rules of procedure definitive, eliminating the term "provisional" from the title. The rules of procedure were subsequently amended at the forty-seventh, forty-ninth, fiftieth, fifty-ninth, seventy-first, eighty-first, eighty-third, 100th and 103rd sessions. The current version of the rules was adopted at the Committee's 3567th meeting during its 124th session.

Part I

General rules

I. Sessions

Rule 1

The Human Rights Committee shall hold sessions as may be required for the satisfactory performance of its functions in accordance with the International Covenant on Civil and Political Rights.

Rule 2

1. The Committee shall normally hold three regular sessions each year.
2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations, taking into account the calendar of conferences and meetings.

Rule 3

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chair may convene special sessions after consulting with the other officers of the Committee. The Chair of the Committee shall also convene special sessions at the request of a majority of the members of the Committee and may do so at the request of a State party to the Covenant.
2. Special sessions shall be convened as soon as possible at a date fixed by the Chair in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

Rule 4

The Secretary-General shall notify the members of the Committee of the date and place of each session. Such notification shall be sent, in the case of a regular session, at least six weeks in advance and, in the case of a special session, at least 18 days in advance.

Rule 5

Sessions of the Committee shall normally be held at United Nations Headquarters or at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General.

II. Agenda

Rule 6

The provisional agenda for each regular session shall be prepared by the Secretary-General in consultation with the Chair of the Committee, in conformity with the relevant provisions of the Covenant and of the first Optional Protocol to the International Covenant on Civil and Political Rights, and shall include:

- (a) Any item the inclusion of which has been decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chair of the Committee;
- (c) Any item proposed by a State party to the Covenant;
- (d) Any item proposed by a member of the Committee;
- (e) Any item proposed by the Secretary-General relating to functions of the Secretary-General under the Covenant, the Optional Protocol or the present rules.

Rule 7

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for consideration at that special session.

Rule 8

The first item on the provisional agenda for any session shall be the adoption of the agenda, except for the election of officers when required under rule 16 of these rules.

Rule 9

During a session, the Committee may revise the agenda and may, as appropriate, add, defer or delete items.

Rule 10

The provisional agenda and the basic documents relating to each item appearing thereon shall be transmitted to the members of the Committee by the Secretary-General, who shall endeavour to have the documents transmitted to the members at least six weeks prior to the opening of the session.

III. Members of the Committee

Rule 11

The members of the Committee shall be the 18 persons elected in accordance with articles 28 to 34 of the Covenant.

Rule 12

The term of office of the members of the Committee elected shall begin on the day after the date of expiry of the term of office of the members whom they replace.

Rule 13

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out the functions of member for any reason other than absence of a temporary character, the Chair of the Committee shall notify the Secretary-General, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chair shall immediately notify the Secretary-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect. The resignation of a member of the Committee shall be notified by that member in writing directly to the Chair or to the Secretary-General and action shall be taken to declare the seat of that member vacant only after such notification has been received.

3. A vacancy declared in accordance with paragraphs 1 and 2 of the present rule shall be dealt with in accordance with article 34 of the Covenant.

4. Any member of the Committee elected to fill a vacancy declared in accordance with article 33 of the Covenant shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Rule 14

Before assuming duties as a member, each member of the Committee shall make the following solemn undertaking in open Committee:

"I solemnly undertake to discharge my duties as a member of the Human Rights Committee independently, impartially and conscientiously."

Rule 15

The guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), excepting the preamble, replace the Committee's own 1998 guidelines on the exercise of the functions of the Committee.

IV. Officers

Rule 16

The Committee shall elect from among its members a Chair, three Vice-Chairs and a Rapporteur, who is responsible for preparing the Committee's annual report. In electing its officers, the Committee shall give consideration to equitable geographical distribution and appropriate gender balance and, to the extent possible, rotation among members.

Rule 17

The Chair, the three Vice-Chairs and the Rapporteur shall constitute the Bureau of the Committee. The Chair shall consult with the other members of the Bureau on matters relating to the organization of work of the Committee, and the Bureau shall determine the agenda for meetings dedicated to reviewing the Committee's methods of work and shall approve the programme of work for future sessions of the Committee. All recommendations and decisions adopted by the Bureau shall be notified to the Committee and, where requested by any member of the Committee, shall be reviewed by the Committee, which may approve or reject them.

Rule 18

The officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office after ceasing to be a member of the Committee.

Rule 19

1. The Chair shall perform the functions conferred upon him or her by the Covenant, the rules of procedure and the decisions of the Committee. In the exercise of those functions, the Chair shall remain under the authority of the Committee and shall consult as broadly as possible with the officers of the Committee (Bureau) and other members of the Committee.

2. The Chair shall represent the Committee at United Nations meetings in which the Committee is officially invited to participate. If the Chair is unable to represent the Committee at such a meeting, she or he may designate another officer of the Committee or, if no officer is available, another member of the Committee, to attend on her or his behalf.

Rule 20

If during a session the Chair is unable to be present at a meeting or any part thereof, the Chair, or if he or she is unable to do so, the remaining members of the Bureau, shall designate one of the Vice-Chairs to act as Chair.

Rule 21

A Vice-Chair acting as Chair shall have the same powers and duties as the Chair.

Rule 22

If any of the officers of the Committee ceases to serve or declares himself or herself unable to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of the predecessor.

Rule 23

When the Committee is working in two chambers, the Chair shall act as Chair of one of the chambers, and one of the Vice-Chairs shall act as Chair of the other chamber. The Chair, in consultation with the Bureau, will designate the Vice-Chair who will chair the second chamber.

V. Secretariat**Rule 24**

1. The secretariat of the Committee and of such subsidiary bodies as may be established by the Committee shall be provided by the Secretary-General.

2. The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Covenant.

Rule 25

The Secretary-General or a representative of the Secretary-General shall attend all meetings of the Committee. Subject to rule 40 of the present rules, the Secretary-General or the representative may make oral or written statements at meetings of the Committee or its subsidiary bodies.

Rule 26

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

Rule 27

The Secretary-General shall be responsible for informing the members of the Committee without delay of any questions which may be brought before it for consideration.

Rule 28

Before any proposal that involves expenditure is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to the members of the Committee or subsidiary body, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chair to draw the attention of members to this estimate and to invite discussion on it when the proposal is considered by the Committee or a subsidiary body.

VI. Languages

Rule 29

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages of the Committee. The working languages of the Committee relating both to translation of documentation and interpretation, will be determined by the Committee depending on the membership of the Committee. This is without prejudice to the right of each State party and authors of communications to provide information to the Committee in any of the six official languages of the United Nations.

Rule 30

Interpretation shall be provided by the Secretariat of the United Nations. Speeches made in any of the working languages shall be interpreted into the other working languages. Speeches made in an official language shall be interpreted into the working languages.

Rule 31

Any speaker addressing the Committee and using a language other than one of the official languages shall normally provide for interpretation into one of the working languages. Interpretation into the other working languages may be based on the interpretation given in the first working language.

Rule 32

Summary records of the meetings of the Committee shall be drawn up in the working languages, as determined by the Committee.

Rule 33

All official documents and formal decisions of the Committee shall be made available in the official languages and in accessible formats.

Rule 34

Any draft document relating to the Committee's activities under the Covenant and requiring discussion and adoption by the Committee must be translated into the working languages of the Committee. Such documents would include any document related to reporting (such as draft concluding observations, draft lists of issues, draft lists of issues prior to reporting and draft reports on follow-up to concluding observations), individual and inter-State communications (such as draft decisions and views and draft reports on follow-up to views), legal interpretations (such as draft general comments) and working methods and other matters (such as draft working methods, draft annual reports, draft rules of procedure and draft guidelines).

VII. Meetings of the Committee

Rule 35

The meetings of the Committee and its subsidiary bodies shall be held in public unless the Committee decides otherwise or it appears from the relevant provisions of the Covenant or the Optional Protocol that the meeting should be held in private. The adoption of concluding observations under article 40 shall take place in closed meetings.

Rule 36

At the close of each private meeting the Committee or its subsidiary body may issue a communiqué.

VIII. Records

Rule 37

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed as soon as possible to the members of the Committee and to any others participating in the meeting. All such participants may, within six working days after receipt of the record of the meeting, submit corrections to the Secretariat. Any disagreement concerning such corrections shall be settled by the Chair of the Committee or the Chair of the subsidiary body to which the record relates or, in the case of continued disagreement, by decision of the Committee or of the subsidiary body.

Rule 38

1. The summary records of public meetings of the Committee in their final form and recordings of public meetings shall be accessible to the public unless, in exceptional circumstances, the Committee decides otherwise.
2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon the decision of the Committee at such time and under such circumstances as the Committee may decide.

IX. Conduct of business

Rule 39

Twelve members of the Committee shall constitute a quorum for plenary meetings of the Committee. The Committee may decide to conduct meetings dedicated to the examination of State reports or communications in chambers and determine, in that case, the quorum requirements for such meetings.

Rule 40

The Chair shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of the present rules, accord the right to speak, put questions to the vote and announce decisions. The Chair, subject to these rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings. The Chair may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. The Chair shall rule on points of order and shall have the power to propose adjournment or closure of the debate, or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee and the Chair may call a speaker to order if that speaker's remarks are not relevant to the subject under discussion.

Rule 41

During the discussion of any matter, a member may, at any time, raise a point of order and the point of order shall immediately be decided by the Chair in accordance with the rules of procedure. Any appeal against the ruling of the Chair shall immediately be put to the vote, and the ruling of the Chair shall stand unless overruled by a majority of the members present. A member may not, in raising a point of order, speak on the substance of the matter under discussion.

Rule 42

During the discussion of any matter, a member may make a motion for the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion, after which the motion shall immediately be put to the vote.

Rule 43

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his or her allotted time, the Chair shall call that speaker to order without delay.

Rule 44

1. When the debate on an item is concluded because there are no other speakers, the Chair shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.
2. A member may, at any time, make a motion for the closure of the debate on the item under discussion, regardless of whether any other member or representative has signified a wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

Rule 45

During the discussion of any matter, a member may make a motion for the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

Rule 46

Subject to rule 41 of these rules, the following motions shall have precedence, in the following order, over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate on the item under discussion.

Rule 47

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the Secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on the following day, or to a later date decided by the Committee.

Rule 48

Subject to rule 46 of these rules, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

Rule 49

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by another member.

Rule 50

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers in favour of the motion and two speakers opposing the motion, after which it shall immediately be put to the vote.

X. Voting**Rule 51**

Each member of the Committee shall have one vote.

Rule 52³⁹⁸

Except as otherwise provided in the Covenant or elsewhere in these rules, decisions of the Committee shall be made by a majority of the members present.

Rule 53

If a vote is equally divided on a matter addressed in this section, other than an election, the proposal shall be regarded as rejected.

Rule 54

Subject to rule 60 of the present rules, the Committee shall normally vote by show of hands, except that any member may request a roll call, which shall then be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chair.

Rule 55

The vote of each member participating in a roll call shall be inserted in the record.

Rule 56

After the voting has commenced, it shall not be interrupted unless a member raises a point of order in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the Chair before the voting has commenced or after the voting has been completed.

Rule 57

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 58

1. When an amendment to a proposal is moved for, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the

³⁹⁸ The Committee decided, at its first session, that in a footnote to rule 52 of the provisional rules of procedure attention should be drawn to the following:

1. The members of the Committee generally expressed the view that its method of work should normally allow for attempts to reach decisions by consensus before voting, provided that the Covenant and the rules of procedure were observed and that such attempts did not unduly delay the work of the Committee.

2. Bearing in mind paragraph 1 above, the Chair at any meeting may, and at the request of any member shall, put the proposal to a vote.

amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. A motion is considered an amendment to a proposal if it adds to, deletes from or revises part of that proposal.

Rule 59

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.

3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

XI. Elections

Rule 60

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of an election to fill a place for which there is only one candidate.

Rule 61

1. When only one person or member is to be elected and no candidate obtains the required majority in the first ballot, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.

2. If the second ballot is inconclusive and a majority vote of members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a person or member is elected.

3. If the second ballot is inconclusive and a two-thirds majority is required, the balloting shall be continued until one candidate secures the necessary two-thirds majority. In the next three ballots, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third unrestricted ballot, and the following three ballots shall be unrestricted, and so on until a person or member is elected.

Rule 62

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining the required majority in the first ballot shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates

obtaining the greatest number of votes in the previous ballot, whose number shall not be more than twice the number of places remaining to be filled; however, after the third inconclusive ballot, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, whose number shall not be more than twice the number of places remaining to be filled; the following three ballots shall be unrestricted, and so on until all the places have been filled.

XII. Subsidiary bodies

Rule 63

1. The Committee may, taking into account the provisions of the Covenant and the first Optional Protocol, set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary for the performance of its functions and define their composition and powers.
2. Subject to the provisions of the Covenant and the Optional Protocol and unless the Committee decides otherwise, each subsidiary body shall elect its own officers and may adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply *mutatis mutandis*.
3. The Committee may also designate one or more of its members as rapporteurs to assist it in any manner in which the Committee may decide, including by making recommendations to the Committee.

XIII. Annual report of the Committee

Rule 64

As prescribed in article 45 of the Covenant, the Committee shall submit to the General Assembly of the United Nations an annual report on its activities, including a summary of its activities under the Optional Protocol as prescribed in article 6 thereof. The report shall be prepared by the Bureau member designated as Committee Rapporteur.

XIV. Information and documentation

Rule 65

1. Without prejudice to the provisions of rule 38 of these rules of procedure and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents of general distribution unless the Committee decides otherwise.
2. All reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 41 and 42 of the Covenant and to the Optional Protocol shall be distributed by the Secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.

3. Reports and additional information submitted by States parties pursuant to article 40 of the Covenant shall be documents of general distribution. The same applies to other information provided by a State party unless the State party concerned requests otherwise.

Part II

Rules relating to the functions of the Committee

XV. Reports from States parties under article 40 of the Covenant

Rule 66

1. The States parties to the Covenant shall submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant.

2. Requests for submission of a report under article 40 (1) (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. In particular, the Committee may request a State to submit a special report in situations requiring immediate attention to appropriately address serious violations of the Covenant. In the case of an exceptional situation when the Committee is not in session, a request may be made through the Chair, acting in consultation with the members of the Committee.

3. Whenever the Committee requests States parties to submit reports under article 40 (1) (b), of the Covenant, it shall determine the dates by which such reports shall be submitted.

4. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and content of the reports to be submitted under article 40 of the Covenant.

Rule 67

1. The Secretary-General may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports of States members of those agencies as may fall within their field of competence.

2. The Committee may invite the specialized agencies to which the Secretary-General has transmitted parts of the reports to submit comments on those parts within such time limits as it may specify.

Rule 68

1. The Committee shall, through the Secretary-General, notify the States parties of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties are expected to be present at the meetings of the Committee when their reports are examined. The Committee shall, during the meetings in which State reports are examined, seek further information about the implementation of the Covenant from the State representatives present at the meeting. Such

representatives should be able to answer questions which may be put to them by the Committee and make statements on reports already submitted by the State party concerned. They may also submit additional information from that State party during the meeting or, in a brief written memorandum submitted within two working days after the meeting.

2. If a State party has submitted a report but fails to send any representative to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, notify the State party through the Secretary-General that at the session originally specified, or at a later one that is indicated, it intends to examine the report and present its concluding observations under rule 74, paragraph 1, of the present rules of procedure. The concluding observations will specify the date of the following periodic report that shall be submitted under rule 66 of the present rules.

Rule 69

The Committee may conduct examinations of reports in plenary or chambers, according to the decision of the Committee. The concluding observations composed pursuant to rule 74, paragraph 1, shall be approved in all cases by the plenary of the Committee.

Rule 70

1. At each session the Secretary-General shall notify the Committee of all cases of non-submission of reports or additional information requested under rules 66, 72 and 74 of the present rules. In such cases the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or additional information.

2. If, after the reminder referred to in paragraph 1 of the present rule, the State party does not submit the report or additional information required under rules 66, 72 and 74 of the present rules, the Committee shall so state in the annual report which it submits to the General Assembly.

Rule 71

1. In cases where the Committee has been notified under rule 70, paragraph 1, of the present rules of the failure of a State to submit under rule 66, paragraph 3, any report under article 40 (1) (a) or (b) of the Covenant and has sent the corresponding reminders to the State party, the Committee may, at its discretion, notify the State party through the Secretary-General that it intends, on a date or at a session specified in the notification, to examine in a public session the measures taken by the State party to give effect to the rights recognized in the Covenant, and to proceed by adopting concluding observations.

2. Where the Committee acts under paragraph 1 of the present rule, it shall transmit to the State party, in advance of the date or session specified, a list of issues, indicating the topics related to the implementation of the Covenant on which the Committee wishes the State to provide specific information, in accordance with rule 73, paragraph 1.

3. The concluding observations shall be communicated to the State party, in accordance with rule 74, paragraph 3, of the present rules, and made public. The State party shall present its next report within two years of the adoption of the concluding observations.

Rule 72

1. When considering a report submitted by a State party under article 40 of the Covenant, the Committee shall first satisfy itself that the report provides all the information required under rule 66 of the present rules.

2. If a report of a State party under article 40 of the Covenant does not, in the opinion of the Committee, contain sufficient information, the Committee may request that State to furnish the additional information which is required, indicating by what date the said information should be submitted.

Rule 73

1. In order to facilitate a constructive dialogue between the Committee and representatives of the State party whose report is to be reviewed, the Committee shall forward to the State party prior to the meeting a list of issues, which will indicate the topics related to the implementation of the Covenant on which the Committee wishes the State to provide specific information. The State party will be invited to submit its responses to the list of issues in writing by a specified date, before the meeting with the Committee.

2. States parties whose initial report has already been reviewed by the Committee may notify the Secretary-General that they are interested in adhering to a simplified reporting procedure. In that case, the Committee will prepare for the State party a list of issues prior to reporting on the basis of the information it received during and after the last periodic review from all sources. The replies of the State party to the list of issues shall constitute for the period under review the State party report under article 40 of the Covenant. The meeting with representatives of the State party shall take place within 12 months from the date in which its replies to the list of issues prior to reporting were submitted to the Committee.

Rule 74

1. On the basis of its examination of any report or information supplied by a State party, the Committee may make appropriate concluding observations which shall be communicated to the State party, together with notification of the date by which the next report under article 40 of the Covenant shall be submitted.

2. No member of the Committee shall participate in the examination of State party reports or the discussion and adoption of concluding observations if they involve the State party in respect of which he or she was elected to the Committee.

Rule 75

1. The Committee may request the State party to give priority to certain aspects of its concluding observations and, thus, request the State party to provide the Committee with follow-up information by

a specified date. For that purpose, the Committee may designate one or more of its members as Rapporteurs to follow up with the State party on its implementation of the concluding observations.

2. The follow-up Rapporteur(s) shall assess the information provided by the State party and from other sources and report to the Committee on her/his activities. The Committee may set guidelines for such assessments.

XVI. General comments

Rule 76

1. The Committee may decide to prepare and adopt general comments on specific topics addressing aspects of the Covenant or its Optional Protocols with a view to assisting States parties in fulfilling their obligations under the Covenant and its Optional Protocols.

2. Before work on the formulation of a general comment begins, the Chair shall invite members of the Committee to propose suitable topics for a general comment. The Committee shall select from among the proposals a topic and appoint one or more members of the Committee to serve as rapporteur(s) entrusted with facilitating the preparation of the general comment.

3. The rapporteur(s) will submit an initial proposal for a general comment to the Committee, which will then discuss the proposal and approve it in first reading, in a preliminary manner, with any necessary changes.

4. The preliminary draft of the general comment will be circulated to the States parties and other relevant stakeholders for comments. The Committee will discuss, in a second reading, any further changes in the general comment. It shall then consider formally adopting the general comment.

Rule 77

The Committee shall communicate, through the Secretary-General, to States parties the general comments it has adopted under article 40 (4) of the Covenant.

XVII. Procedure for the consideration of communications received under article 41 of the Covenant

Rule 78

1. A communication under article 41 of the Covenant may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.

2. The notice referred to in paragraph 1 of the present rule shall contain or be accompanied by information regarding:

(a) Steps taken to seek adjustment of the matter in accordance with article 41 (1) (a) and (b) of the Covenant, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;

- (b) Steps taken to exhaust domestic remedies;
- (c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

Rule 79

The Secretary-General shall maintain and publish a permanent register of all communications received by the Committee under article 41 of the Covenant.

Rule 80

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 78 of the present rules and shall transmit to them as soon as possible copies of the notice and relevant information.

Rule 81

1. The Committee shall examine communications under article 41 of the Covenant at closed meetings.
2. The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

Rule 82

A communication shall not be considered by the Committee unless:

- (a) Both States parties concerned have made declarations under article 41 (1) of the Covenant that are applicable to the communication;
- (b) The time limit prescribed in article 41 (1) (b) of the Covenant has expired;
- (c) The Committee has ascertained that all available domestic remedies have been invoked and exhausted in the matter in conformity with the generally recognized principles of international law, or that the application of the remedies is unreasonably prolonged.

Rule 83

Subject to the provisions of rule 78 of the present rules, the Committee shall proceed to make its good offices available to the States parties concerned with a view to a friendly resolution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.

Rule 84

The Committee may, through the Secretary-General, request the States parties concerned, or either of them, to submit additional information or observations orally or in writing. The Committee shall

indicate a time limit for the submission of such written information or observations.

Rule 85

1. The States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.
3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

Rule 86

1. Within 12 months of the date on which the Committee received the notice referred to in rule 78 of the present rules, the Committee shall adopt a report in accordance with article 41 (1) (h) of the Covenant.
2. The provisions of paragraph 1 of rule 85, shall not apply to the deliberations of the Committee concerning the adoption of the report.
3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

Rule 87

If a matter referred to the Committee in accordance with article 41 of the Covenant is not resolved to the satisfaction of the States parties concerned, the Committee may, with their prior consent, proceed to apply the procedure prescribed in article 42 of the Covenant.

XVIII. Procedure for the consideration of communications received under the Optional Protocol

A. Transmission of communications to the Committee

Rule 88

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which are or appear to be submitted for consideration by the Committee under article 1 of the Optional Protocol.
2. The Secretary-General, when necessary, may request clarification from the author of a communication as to whether the author wishes to have the communication submitted to the Committee for consideration under the Optional Protocol. In case there is still doubt as to the wish of the author, the Committee shall be seized of the communication.

3. No communication shall be received by the Committee if it (a) concerns a State which is not a party to the Optional Protocol; (b) is not in writing; or (c) is anonymous.

4. Communications shall be submitted in one of the official languages of the Committee indicated in rule 29, preferably the United Nations language of the State party against which the communication is addressed.

Rule 89

1. The Secretary-General shall maintain a permanent record of all communications submitted under the Optional Protocol.

2. The Secretary-General shall prepare a list of the communications registered by the Committee, together with a brief summary of their contents, and will make it public while keeping the author's name confidential.

3. The full text of any registered communication may be made available in the language of submission to any member of the Committee upon request by that member.

Rule 90

1. The Secretary-General may request clarification or additional information from the author of a communication, including:

(a) The name, address, date of birth and occupation of the author and the verification of the author's identity;

(b) The name of the State party against which the communication is directed;

(c) The object of the communication;

(d) The provision or provisions of the Covenant alleged to have been violated;

(e) The facts of the claim and evidence to substantiate them;

(f) Steps taken by the author to exhaust domestic remedies;

(g) The extent to which the same matter is being or has been examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the author of the communication with a view to avoiding undue delays in the procedure under the Optional Protocol.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the author of the communication.

Rule 91

Communications may be submitted by or on behalf of one or several individuals, whose names should be provided. Where a communication is submitted on behalf of one or several individuals, this shall be with their consent, unless the author(s) can justify acting on their behalf without such consent.

B. Registration of communications and submission of observations and comments by the parties

Rule 92

1. As soon as possible after the communication has been received, the Committee, through its special rapporteur designated under rule 107, paragraph 2, of the present rules, shall decide whether the communication brought to its attention should be registered.
2. After the decision to register has been taken the communication shall be brought to the attention of the State party concerned, with a request that the State party submit a written reply within six months.
3. The special rapporteur may decide that in order to reach a determination on the admissibility of a registered communication, its transmission to the State party is not required. However, the decision shall be transmitted to the Committee plenary for discussion. Inadmissibility decisions on registered cases can be taken by the Committee without prior transmission of the communication to the State concerned for observations.
4. A request addressed to a State party under paragraph 2 of the present rule shall include a statement of the fact that such a request does not imply that any decision has been reached on the question of admissibility or the merits of the communication.
5. Within six months of receipt of the Committee's request under the present rule, the State party shall submit to the Committee written explanations or statements that shall relate both to the admissibility of the communication and its merits, as well as to any remedy that may have been provided in the matter, unless the Committee or the special rapporteur decides, in view of the circumstances of the case and any remedy requested by the author, to request a written reply that relates only to the question of admissibility. A State party that has been requested to submit a written reply that relates only to the question of admissibility is not precluded thereby from submitting, within the six-month period, a written reply that shall relate to both the admissibility and the merits of the communication.
6. The author may submit a reply and the State party a rejoinder.
7. Upon the request of one of the parties, additional written submissions may be authorized by the special rapporteur, on an exceptional basis, with due consideration given to the circumstances of the case.
8. The reply and the rejoinder, and additional submissions that may be authorized by the special rapporteur, shall focus on addressing the issues still in contention.
9. Notwithstanding the six-month period for the State party's first submission, as set out in article 4 of the Optional Protocol, the Committee will establish a definite date for the completion of further steps in the proceedings.
10. No written observations or other documents filed outside the time limit for their submission shall be included in the case file, unless the special rapporteur decides otherwise.
11. A party seeking an extension of the time limit must make a request as soon as it has become aware of the circumstances justifying such an extension and, in any event, before the expiry of the time limit. It should state the reason for the request for an

extension. The decision to extend the time limit is at the discretion of the special rapporteur.

12. Before draft views are presented to the working group for discussion, the special rapporteur may request the parties to provide updates on the current status of the case.

Rule 93

1. A State party that has received a request for a written reply under paragraph 2 of rule 92 on both admissibility and the merits of the communication may apply in writing, within two months, for the question of admissibility to be examined separately from the merits. The Committee, through its special rapporteur, will decide on the State party's request. If the Special Rapporteur agrees to the request the State party will not need to submit explanations or statements on the merits until the Committee decides otherwise.

2. The author may submit a reply to the State party's objection on admissibility.

3. Upon the request of one of the parties, additional written submissions may be authorized by the special rapporteur, on an exceptional basis, with due consideration for the circumstances of the case.

Rule 94

1. At any time after the registration of a communication and before a determination on the merits has been reached, the Committee may request that the State party concerned take on an urgent basis such interim measures as the Committee considers necessary to avoid possible actions which could have irreparable consequences for the rights invoked by the author.

2. When the Committee requests interim measures under the present rule it will indicate that the request does not imply a determination on the admissibility or the merits of the communication, but that failure to implement such measures is incompatible with the obligation to respect in good faith the procedure of individual communications established under the Optional Protocol.

3. At any stage of the proceedings the Committee will examine any arguments presented by the State concerned on the request to take interim measures, including reasons that would justify the lifting of the measures.

4. The Committee may withdraw a request for interim measures on the basis of information submitted by the State party and the author(s) of the communication.

Rule 95

Upon receiving information from the author of the communication, the Committee may also request the State party to take protection measures in favour of individuals, including the author(s), his/her counsel and family members, who might suffer acts of intimidation or reprisals as a result of the submission of the communication or cooperation with the Committee. The Committee may seek from the

State party written explanations or statements clarifying the matter and describing any action taken in that regard.

Rule 96

1. When considering communications under the Optional Protocol, the Committee or its special rapporteur may accept information and documentation submitted by third parties which may be relevant for the proper determination of the case.
2. The Committee will establish guidelines for the requirements to be observed for third-party submissions.
3. The Committee shall forward third-party submissions to the parties to the communication, who are entitled to submit written observations and comments in reply.
4. Individuals or entities that are third parties shall not be considered parties to the communication.

C. Procedure to determine the admissibility and the merits of communications

Rule 97

1. Communications shall be examined by the Committee, as to their admissibility and/or merits in the order in which they were received by the Secretariat, unless the Committee decides otherwise in view of the circumstances and issues involved.
2. Prior to examining the merits of a communication, the Committee shall decide whether the communication is admissible.
3. Two or more communications may be dealt with jointly, if deemed appropriate by the Committee.
4. Decisions on admissibility and the merits shall be taken by the Committee by a simple majority, in accordance with the present rules. A majority of members present and voting shall be required for finding a communication admissible and for any finding of violation of the Covenant.
5. The Committee may decide to review communications in chambers.

Rule 98

1. Prior to their examination by the Committee plenary, communications will be examined by one or more working groups established under rule 107, paragraph 1, of the present rules and consisting of at least five members. A rapporteur from among the members of the working group will be designated to assist in the handling of communications.
2. The rules of procedure of the Committee shall apply as relevant to the meetings of the working group. Four members constitute a quorum for the meetings.
3. The working group shall make recommendations to the Committee concerning the fulfilment of the conditions of admissibility laid down in the Optional Protocol. The working group may also make

recommendations to the Committee concerning the merits of the communications under examination.

4. The working group may declare a communication inadmissible when all the members so agree. However, the decision will be transmitted to the Committee plenary, which may confirm it without formal discussion. If any Committee member requests a plenary discussion, the plenary will examine the communication and take a decision.

5. Decisions to declare a communication admissible separate from its examination on the merits may be taken by the working group when all its members so agree, provided that the number of voting members is at least five.

Rule 99

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 107, paragraph 1, of the present rules shall ascertain:

(a) That the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Optional Protocol;

(b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual personally or by that individual's representative. A communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally;

(c) That the communication does not constitute an abuse of the right of submission. An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication;³⁹⁹

(d) That the communication is not incompatible with the provisions of the Covenant;

(e) That the same matter is not being examined under another procedure of international investigation or settlement;

(f) That the individual has exhausted all available domestic remedies.

Rule 100

1. Where the Committee decides that a communication is inadmissible under the Optional Protocol, it shall as soon as possible communicate its decision, through the Secretary-General, to the

³⁹⁹ The present rule in its amended form applies to communications received by the Committee as of 1 January 2012.

author of the communication and where the communication has been transmitted to a State party concerned to that State party.

2. If the Committee has declared a communication inadmissible under article 5 (2) of the Optional Protocol, that decision may be reviewed at a later date by the Committee upon a written request by or on behalf of the individual concerned, containing information to the effect that the reasons for inadmissibility referred to in article 5 (2) no longer apply.

Rule 101

1. In those cases in which the issue of admissibility is decided before receiving the State party's reply on the merits and the Committee, or a working group established under rule 107, paragraph 1, of the present rules, decides that the communication is admissible, that decision shall be transmitted, through the Secretary-General, to the author of the communication and the State party concerned.

2. Within six months, the State party concerned shall submit to the Committee written explanations or statements on the merits and the remedy, if any, that may have been taken by that State party.

3. Any explanations or statements submitted by a State party pursuant to the present rule shall be communicated, through the Secretary-General, to the author of the communication, who may submit any additional written information or observations within fixed time limits.

4. The Committee may decide in exceptional cases to invite the parties to comment on each other's submissions orally, in accordance with its guidelines on making oral comments concerning communications (CCPR/C/159/Rev.1).

5. Upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanations or statements submitted by the State party pursuant to this rule.

Rule 102

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall consider the communication in the light of all the information made available to it and shall formulate its Views thereon.

2. The Committee shall not decide on the merits of the communication without having considered the applicability of all the grounds of admissibility referred to in the Optional Protocol.

3. The Committee's findings on the merits shall be known as "Views". The Secretary-General shall transmit the Views of the Committee, to the author of the communication and to the State party concerned.

Rule 103

Any member of the Committee who has participated in a decision may write a separate opinion that should be appended to the Committee's Views or decision.

Rule 104

The Committee may discontinue the consideration of a communication when the reasons for its submission under the Optional Protocol have become moot, or on other relevant grounds.

Rule 105

1. The Committee may appoint one or two members as rapporteur(s) for repetitive communications.
2. The rapporteur(s) for new communications and interim measures may refer cases which raise facts and legal questions of substantially the same nature as those already decided by the Committee in previous cases to the rapporteur(s) for repetitive communications.
3. The rapporteur(s) for repetitive communications shall propose a draft recommendation to the Working Group established under rule 107, paragraph 1. Unless one or more members of the Working Group objects, the recommendation of the rapporteur(s) for repetitive communications shall be submitted to the Committee for adoption. The Working Group may, if it so decides, modify or reject the recommendation.
4. Unless one or more members of the Committee objects, recommendations of the rapporteur(s) for repetitive communications shall be considered to be adopted as Views of the Committee.

Rule 106

1. The Committee shall designate a Special Rapporteur for follow-up on Views adopted under article 5 (4) of the Optional Protocol, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's Views.
2. The Special Rapporteur may make such contacts and take such action as appropriate for performance of the follow-up mandate. The Special Rapporteur shall make such recommendations for further action by the Committee as may be necessary.
3. The Special Rapporteur shall regularly report to the Committee on follow-up activities.
4. The Committee shall include information on follow-up activities in its annual report.

D. General provisions regarding the consideration of communications by the Committee or its subsidiary bodies**Rule 107**

1. In any matter related to communications under the Optional Protocol, the Committee may establish a working group and may designate a rapporteur to assist in any manner in which the Committee decides.
2. The Committee will designate one or more special rapporteurs to process new communications and requests for interim measures as

they are received, as well as to deal with other procedural matters as authorized by the Committee.⁴⁰⁰

Rule 108

1. A member shall not take part in the examination of a communication by the Committee:

(a) If he or she is a national of the State party or has the same nationality as the alleged victim;

(b) If he or she has any personal or professional conflict of interest in the case;

(c) If he or she has participated in any capacity in the making of any decision on the case covered by the communication.

2. Any question which may arise under paragraph 1 of the present rule shall be decided by the Committee. The member concerned shall not take part in the decision.

Rule 109

If, for any reason, a member considers that he or she should not take part or continue to take part in the examination of a communication, the member shall inform the Chair of his or her withdrawal.

Rule 110

Meetings of the Committee or its subsidiary bodies, during which communications under the Optional Protocol will be examined, shall be closed. Meetings during which the Committee may consider general issues, such as procedures for the application of the Optional Protocol, may be public if the Committee so decides.

Rule 111

1. Communications under the Optional Protocol shall be examined by the Committee and a working group established pursuant to rule 107, paragraph 1, of the present rules in closed session. Oral deliberations and summary records shall remain confidential.

2. The Committee may decide ex officio or upon request of the author or alleged victim that the names of the author or the alleged victim be kept confidential in the final decision of the Committee disposing of the communication.

3. All working documents issued by the Secretariat for the Committee, the Working Group established pursuant to rule 107, paragraph 1, or the Special Rapporteur designated pursuant to rule 107, paragraph 2, shall remain confidential, unless the Committee decides otherwise.

4. Paragraph 1 of the present rule shall not affect the right of the author of a communication or the State party concerned to make public any submissions or information bearing on the proceedings. However, the Committee, the Working Group or the Special

⁴⁰⁰ The functions of the Special Rapporteur on new communications and interim measures are set out in document CCPR/C/110/3.

Rapporteur may, as deemed appropriate, request the author of a communication or the State party concerned to keep confidential the whole or part of any such submissions or information.

5. When a decision has been taken on confidentiality, pursuant to paragraph 4 of the present rule, the Committee may decide that all or part of the submissions shall remain confidential after the Committee's decision on inadmissibility, the merits or discontinuance has been adopted.

6. The Committee's decisions on inadmissibility, the merits and discontinuance shall be made public after having been brought to the attention of the author and the State party concerned. Decisions taken under rule 94 by the Committee or the Special Rapporteur designated pursuant to rule 107, paragraph 2, of the present rules shall be made public if the Committee or the Special Rapporteur consider it appropriate.

7. The Secretariat is responsible for the distribution of the Committee's final decisions. The Secretariat shall not be responsible for the reproduction and distribution of submissions concerning communications.

Rule 112

Information furnished by the parties within the framework of follow-up to the Committee's Views is not subject to confidentiality, unless the Committee decides otherwise. Decisions of the Committee relating to follow-up activities are equally not subject to confidentiality, unless the Committee decides otherwise.

Rule 113

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

XIX. Amendments

Rule 114

The present rules of procedure may be amended by a decision of the Committee, without prejudice to the relevant provisions of the Covenant and the Optional Protocol.
