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**Human Rights Committee**

 Views adopted by the Committee under the Optional Protocol, concerning communications Nos. 3200/2018, 3201/2018, 3202/2018, 3203/2018, 3204/2018, 3205/2018, 3206/2018, 3207/2018 [[1]](#footnote-1)\*,[[2]](#footnote-2)\*\*

*Communication submitted by:* Mukhamadrasul Abdurasulov, Osmonali Otamirzaev, Bakhodir Zhalalov, Abdurashit Yangibaev, Muradil Abduvaitov, Islombek Atabekov, Ikhtier Khamdamov, Abdumomin Abduvaitov (represented by counsel, Utkirbek Dzhabborov)

*Alleged victims:* The authors

*State party:* Kyrgyzstan

*Date of communications:* 10 May 2018 (initial submissions)

*Document references:* Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 9 July 2018 (not issued in document form)

*Date of adoption of Views:*  15 July 2022

*Subject matter:* Torture and mistreatment of group of authors during the June 2010 events

*Procedural issue:* Non-exhaustion of domestic remedies

*Substantive issues:* Torture; lack of investigation; arbitrary detention; denial of fair trial

*Articles of the Covenant:* 2 (3), 7, 9 (1), 10 (1), 14 (1), (3) (b), (g), (d), and (e)

*Article of the Optional Protocol:* 5 (2) (b)

1.1 The authors of the eight communications, all nationals of Kyrgyzstan, are: Mukhamadrasul Abdurasulov, Osmonali Otamirzaev, Bakhodir Zhalalov, Abdurashit Yangibaev, Muradil Abduvaitov, Islombek Atabekov, Ikhtier Khamdamov, and Abdumomin Abduvaitov. The authors claim that the State party violated their rights under various articles of the Covenant as shown below. The Optional Protocol entered into force for the State party on 7 January 1995. The authors are represented by counsel.

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

 Facts as submitted by the authors

2.1 The authors submit that from 10 to 14 June 2010, inter-ethnic clashes between Kyrgyz and Uzbek ethnic groups took place in the south of Kyrgyzstan. More than 470 people were killed, and properties destroyed, with most of the victims and damaged properties belonging to members of the Uzbek minority. More than one million residents fled to Uzbekistan, and 300 000 persons were internally displaced. The state of emergency with a curfew was declared by the Kyrgyz authorities from 13 to 22 June 2010. In 2013, the Office of the Prosecutor General of Kyrgyzstan reported that based on June 2010 events, 5647 criminal cases were initiated.

2.2 The criminal prosecutions that followed these events were marked by reports of human rights abuses against detainees and defendants. One of the most prominent cases, where the defendants reported to have suffered from torture and mistreatment, was so-called “SANPA” case[[3]](#footnote-3). According to the investigators, on 12-14 June 2010, a group of ethnic Uzbeks started a fire that blocked a road not far from “SANPA” cotton processing plant, near Suzak, a village in the south of the country. The crowd poured mazut on the road and set it on fire, to block the passing cars. This mob then allegedly shot and killed drivers and their passengers who were forced to stop due to fire. As a result, 16 persons were shot dead, and nine vehicles were set on fire. On 14 June 2010, Z.H., then the prosecutor of Suzak District, initiated criminal investigations into these events, and an investigation task force was created.

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

(a) On 28 June, around 10 a.m.[[4]](#footnote-4), *Mukhamadrasul Abdurasulov* was going to his place of employment when two men wearing civilian clothes stopped him. They forced him into a car, and brought him to Suzak district police station. He was taken to one of the offices on the second floor of the building, where about ten police officers started beating him and forced him to remove all his clothes. One of the police officers also used ethnic slurs. Another police officer forced him to wear a gasmask, while blocking the flow of air into the mask. All officers demanded that he confessed his guilt in participating in the June riots and subsequent murders. Due to the beatings that he suffered, the author lost consciousness several times. The police officers also extinguished their cigarettes on his body and used a wooden bat to torture him. Unable to withstand torture, the author signed a document, which contained his confession, but the author could not read the text. The beatings continued until the court hearings which began on 16 August 2010;

(b) *Osmanali Otamirzaev* was arrested on 2 July 2010[[5]](#footnote-5) at his place of residence. The author’s home was searched, and police officers took the author to the police station. There, the author was beaten by eight police officers, who wanted him to confess to committing a murder. After a while, the author was taken to another room, where he was asked again, whether he committed any murders. When he did not confess to murder and refused to sign a confession, a police officer resumed the beatings, put a gas mask on him to suffocate him, and used a black plastic bag over his head, so he could not breathe. Suffering from heavy beatings and torture, the author finally signed two or three blank pieces of paper. Police officers promised him that he would be released after a day or so, but instead, the torture continued in the next days as well;

(c) On 30 July 2010, two police officers arrived at *Bakhodir Zhalalov’s* place of residence. He was taken to the police station[[6]](#footnote-6), and interrogated there about someone named U.R. During the interrogation, the author received a phone call from his relative informing him that police officers were searching his house. The author asked the search to be conducted in his presence, but this request was denied. The author was placed in the temporary isolation ward of the Suzak police district, where he did not have a bed, lights, food, water, or access to toilet. As the author is a former police officer himself, he asked to be placed in a separate cell, as he was concerned for his safety, but this request was denied. The cellmates threatened the author and he could not sleep due to these threats. In the middle of August 2010, the author was brought into one of the rooms of the police station, where he was threatened with physical violence, to convince him to sign a confession. The author wrote a statement, and refused to admit that he had committed any crimes. The author was first tortured on 2 or 3 September 2010. Two police officers, who were wearing masks, came into his cell, and started beating him up. One of the strikes bruised his left eye, which affects the author’s vision to this day. Police officers told him that they will beat him every day until he signed a confession. Finally, under the psychological and physical threats, the author agreed to sign confession;

(d) On 17 June 2010, while *Abdurashit Yangibaev* was working in the fields, along with another colleague, he saw several police officers approaching him. They accused him of spying, and started beating him. One of the police officers threatened to shoot him with a machine gun. The author was arrested without being given a reason, and was brought to the Suzak district police station[[7]](#footnote-7). There, the author was beaten in the head and his body, and he was suffocated with a blue plastic bag over his head. He was then taken to an inner courtyard of the police station, where police officers tied his hands and legs, and directed a stream of ice-cold water on his body. After that, police officers started beating him, and as a result, the author lost seven teeth. Police officers asked the author to confess in crimes related to the “SANPA” events. The author told them that at the time in question, he was only carrying out his work-related duties, and had nothing to do with any murder. Police officers kept torturing him, and threatened to bring in his three sons, so the author signed all the papers. On 22 June 2010, the author was transferred to Bozor-Korgon police station, where he was beaten by police officers. Using pliers, police officers tortured him by removing nails from one of the fingers on his left hand. The next day, the author was beaten again, this time, police officers used batons and beat the author on the soles of his feet. Both his feet turned black as a result, and the author could not walk for at least two days. The author was not provided with medical assistance when he requested it;

(e) *Muradil Abduvaitov* worked as a butcher, and was at his workplace on 23 June 2010, when four members of the security forces asked him to follow them to a police station. Initially, these four officers told the author that they were from the tax agency, and wanted to inspect the author’s business. The author was brought to Zhalal-Abad department of national security[[8]](#footnote-8), but even before arrival, the officers started beating him up in the car. The author understood that he was being accused of participating in the tragic events earlier that month. In the building, the author also saw his brother, Abdumomin Abduvaitov. The author was interrogated about his whereabouts during the events in question. When the author denied having been at the “SANPA” location, security officers showed him a video of him passing by in his car not far from this location, in Balta-Kazyk village, which was close to the Uzbekistan-Kyrgyzstan border. The beatings continued, including using plastic bottles filled with water, for more than three hours. The author could not stand the torture, and signed all the papers. The author cannot read or write, and did not know the content of the papers that he signed. Later that day, the author was brought to the Suzak district police station, where he was beaten again, this time by police officers. Police officers demanded that the author testify against his two colleagues as participants of the “SANPA” events. When he refused, he was taken to another room, which they called “signing room or a pressure room”, where the author was beaten again. He was also given an injection of an unknown substance. The author finally signed some blank pieces of paper. Back in his cell, he was beaten again, even after signing the blank paper. He was told that he was being punished for killing persons of Kyrgyz ethnicity;

(f) At the time of his apprehension, *Islombek Atabekov* was 18 years old, and worked as a mechanic not far from Suzak village. On 6 August 2010, the author was at his place of work, when two persons in civilian clothing came to him and asked about his father. At some point, he was forced into a car, and once he was inside, he saw his mother there. When they were brought to the Suzak police station[[9]](#footnote-9), he was separated from his mother. In one of the offices, he was interrogated about, and police officers demanded his confession in committing a murder. The author refused. The author was then asked to sign a statement, which he did, without reading the contents, since he is illiterate. The author was taken to another room, where he was beaten for about two hours. The officers hit soles of his feet with police batons. At some point, several other officers joined, and they continued beating the author for two days. During this time, the author was suffocated using a gas mask, when the officers would put it on his head, and block the air passage. On 8 August 2010, the author was interrogated, and this time, his questioning was registered in the registration book. He was beaten again when he refused to sign blank pieces of paper. The same day, the author was taken to one of the offices in the building, where he saw his mother. His mother was asked to call the author’s father, and when he picked up the phone, one of the police officers told him to come to the police station, and if he did, they would release his son. The author’s mother was asked to bring 1000 USD for the release of the author. The author’s mother filed a complaint to the prosecutor’s office, claiming that she was being extorted by police officers, but her complaint was ignored;

(g) At the time of the events, *Ikhtier Khamdamov* was an unemployed young man of 19 years old, who could not read or write very well. On 7 July 2010, he was on his way to see his father, when he was stopped by four officers of Zhalal-Abad regional police[[10]](#footnote-10). There, the author was taken to one of the offices on the second floor. Eight or nine officers demanded that he drafted a letter explaining his whereabouts during “SANPA” events. The author started writing that he was at home, and had nothing to do with killing anyone. Officers became angry that he would not confess his crimes, and started beating him up. They used police batons to hit him on the soles of his feet, and gas masks to suffocate him. The author was hurt, but could not ask for medical assistance. For two full days, the author was handcuffed to the chair in one of the offices – he was not given food, water, or allowed access to toilet. Several times during these two days, police officers would come in and beat him. No lawyer was present at any time. On the third day, the author finally gave in to torture, and signed a statement that he participated in the “SANPA” events,

(h) *Abdumomin Abduvaitov* was detained on 23 June 2010[[11]](#footnote-11). He was in the fields planting rice in the village of Suzak. The author was taken to Suzak police station by a group of three persons, the author recognized them being from national security services. When entering the building, the author also saw his younger brother – Muradil Abduvaitov, and later heard his screams when he was being tortured. At the police station, several officers started beating him as well, and demanded that he confessed his participation in the tragic events of that year. The author was taken to another office, where a national security officer started beating him up, his hands tied with a piece of fabric. Other officers later joined, and the beating continued for five hours. They asked about the author’s whereabouts from 11 to 17 June, told him that they have video evidence against him, but he never saw the actual video. The beatings continued until the author signed a confession. This statement was typed up by police officers, and he was asked to sign below the text, without reading. When the author was taken to his cell, he was again beaten up. The officers who were torturing him, explained that now, he was being punished for killing people of Kyrgyz ethnicity.

2.4 The initial apprehension and detention of the authors were not registered, as the police officers used this time to torture them. Two or three days after the initial apprehension, the authors were taken before a judge, without being warned that there would a pre-trial hearing. Lawyers representing the authors did not assist them during the pre-trial hearing, and asked them to admit that they committed all the crimes there were being accused with. The authors complained to the judges that they were being tortured, but the presiding judge did not respond and ordered all authors to be held in detention pending trial.

2.5 During their detention, the authors suffered lack of space, fresh air, natural light, among other things. The toilet was not separated from the rest of the cell, where eight to twelve detainees were held at a time, in a space of approximately seven square meters. In such conditions, the authors could not properly prepare for their defence, as there was no space, no desks and no lights. During the detention, the authors were constantly labelled as murderers of Kyrgyz people, and felt threatened. The deplorable conditions of detention had been documented by organizations such as the OSCE in their 2012 report.[[12]](#footnote-12) The temporary isolation wards, which should have been used only for short detention of a few hours, before the detainees were transferred to pre-trial detention centres, were instead used to detain people for several months. When the authors were transferred from one isolation ward to another, they were given a so-called “welcome” – they were beaten up by other detainees. The authors asked for medical assistance, but these requests were ignored.

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

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

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

2.9 Moreover, while the court proceedings were ongoing, during the breaks between hearings, the authors continued to be subjected to beatings and torture to force them to confess before the judge. On 30 September 2010, after the first court hearing, the defendants were taken to the Suzak police station, where police station Chief called in someone named “Shakir”. Shakir was said to be chief of special riot police force, and he ordered several police officers to beat up all the authors. The beatings continued for one hour. The officers who tortured the defendants demanded a confession in court, and told them they would be sentenced to life imprisonment notwithstanding their confession.

2.10 The presiding judge banned the relatives of the authors from attending the trial, and explained that he could not “guarantee their safety”, and due to the size of the courtroom. With the silent agreement of law enforcement officers, representatives of the victims attacked and assaulted the authors’ relatives while they were present in the Nooken District Court, in total impunity. During the trial itself, the representatives of victims interrupted the authors, did not allow their lawyers to ask questions, or put forward evidence. The presiding judge did not do anything to stop this. Several of the authors’ relatives were hospitalized[[13]](#footnote-13) with grave injuries.

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

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

2.13 During the trial, the judge, without providing explanations, would deny the authors’ request to make a statement; relatives and other witnesses for defense were not questioned, and the court ignored inconsistencies in testimonies of other witnesses. Witnesses for prosecution testified, for example, that they remembered the names of the defendants, but could not tell the clothing they were wearing, or any other items that would identify the alleged attackers. Witnesses for defense, on the other hand, were too scared to testify, and the defense attorneys were concerned about their safety, and therefore, could not pose questions that they wanted to ask.

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

 Complaint

3.1 The authors claim that the State party violated their rights under article 7 of the Covenant by torturing them in order to obtain confessions for crimes they did not commit. These included beatings, suffocation, and other forms of physical and mental torture. Five of the eight authors also provide a medical certificate, signed by an expert on forensic psychiatry, T.K. Asanov. The expert concludes that his findings are consistent with the torture alleged by the authors.[[14]](#footnote-14)

3.2 Furthermore, the State party failed to conduct an impartial and effective investigation into these torture claims, as required by the jurisprudence of the Committee. Despite the authors’ complaints during the court hearings, as well their requests for investigation addressed to the prosecutor’s office, the State party failed to take any actions, in violation of the authors’ rights under article 2 (3) read in conjunction with article 7, of the Covenant.

3.3 The State party also violated the authors’ rights under article 9 (1) of the Covenant. The authors claim that they were apprehended, but that their detention was not formalized or registered, for hours or days. This was done despite article 95 of the Criminal Procedure Code, which requires registration within three hours of initial apprehension. This was done to allow time for police officers to torture the authors. During the detention hearing, the court never considered any alternatives to the detention. Moreover, during these hearings, the authors were represented by “pocket” defence lawyers provided by the government, who failed to make any arguments to defend their clients.

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

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

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

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

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

 State party’s observations on admissibility and the merits

4.1 On 28 December 2018[[15]](#footnote-15), the State party provided its observations on admissibility and the merits of the communications. The State party submits that on 12 and 13 June 2010, near the cotton-processing plant “SANPA” in Suzak village, a group of persons of Uzbek ethnicity blocked part of the highway from Bishkek to Osh. These persons were armed with firearms, explosive substance in glass bottles, wooden sticks, and metal objects, burned and destroyed eleven cars, and in the process, shot the drivers and passengers of these vehicles.

4.2 As a result, unidentified bodies of five males, and two females were brought to the Zhalal-Abad regional hospital’s morgue. On 14 June 2010, the Suzak district police initiated a criminal investigation into these events. On 15 June 2010, another body was found, of Z.T.O., who was shot to death, and his car burned nearby. The same day, the body of A.B.Y. was found near the Suzak village, shot to death with a firearm.

4.3 On 15 June 2010, near the “SANPA” plant, the police detained one of the authors, *Abdurashit Yangibaev*[[16]](#footnote-16). They found in his possession a knife, and firearm cartridges. The author was detained under the Criminal Procedure Code of Kyrgyzstan, to establish whether he was involved in the murders and in the destruction of a property near “SANPA”. The author was subsequently charged with these crimes, and taken into custody pending his trial.

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

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

4.6 Several authors – *Atabekov, Otamirzaev, M. Abduvaitov, Yangibaev and Abdurasulov* - complained that the Suzak district police officers subjected them to “unauthorized methods of inquiry and investigation”. The prosecutor’s office looked into these claims, and on 14 February 2014, decided not to open a criminal investigation, due to lack of *corpus delicti*. The decision not to initiate a criminal investigation was found lawful by court decision dated 23 May 2014, and confirmed on appeal by the Zhalal-Abad Regional Court on 5 August 2014, and on 13 January 2015, by the Supreme Court of Kyrgyzstan.

4.7 A similar complaint was brought by *A. Abduvaitov* through his lawyer, O.Z.H. On 17 April 2017[[17]](#footnote-17), the Suzak district prosecutor’s office again refused to initiate a criminal investigation, a decision that was upheld by courts, by Suzak District Court on 6 April 2015, by Zhalal-Abad Regional Court on 22 May 2015, and 8 September 2015, by the Supreme Court. The prosecutor’s office also refused to investigate claims as submitted by Bakhodir Zhalalov, a decision which was also upheld by court, with a final decision by the Supreme Court of Kyrgyzstan dated 17 January 2017.

4.8 The authors, however, did not file supervisory review complaint to the Supreme Court, under article 384 of the Criminal Procedure Code of Kyrgyzstan. Under the provisions of this article, the authors had a right to bring a complaint on verdicts and sentences that came into force, under various circumstances, such as violations of rules to gather evidence, unlawful actions or inaction of the investigators, prosecutors or judges, and circumstances that indicate that the authors were innocent. Due to the fact that such supervisory complaints have not been filed, the authors’ complaints before the Committee should be considered as inadmissible.

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

5.1 In their comments of 19 November 2019, the authors submit that the State party failed to respond to their allegations. The State party described the moment when one of the authors – Yangibaev, was detained, and claims that it occurred on 17 June 2010. The author, however, in his initial complaint before the Committee, submitted that he was arrested on 15 June 2010. This confirms that the State party violated this author’s rights under article 9 of the Covenant. The State party further claims that on the same date – 17 June 2010 – the author was charged with several crimes. The Suzak District Court, on 19 June 2010, decided to detain the author pending trial. This confirms that the author was arbitrarily detained for 48 hours until he was formally charged with crimes, and that his detention was decided by a judge after 96 hours of actual detention, in direct violation of article 110(2) of the Criminal Procedure Code of Kyrgyzstan in force at the time. This once again confirms the violation of the author’s rights under article 9 (1) of the Covenant. As for the other authors, the State party does not submit any observations regarding their unlawful detention.

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

5.3 Furthermore, the Committee has an established jurisprudence regarding the events of June 2010 in the south of the country. In communication No. 2435/2014, *Ashirov v. Kyrgyzstan*, the Committee stated that “the State party’s obligation to properly investigate the author’s claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.”[[18]](#footnote-18)

5.4 As for the State party’s contention that the authors failed to file a complaint under supervisory review procedure, the authors submit that the Committee established jurisprudence is that they do not have to exhaust domestic remedies that are not effective. During the supervisory review procedure, the presence of the defendant is not guaranteed. In case of *Askarov v. Kyrgyzstan*, for example, the Supreme Court denied Mr. Askarov’s request to be present. Furthermore, the supervisory review court does not consider new evidence, and only examines whether the relevant provisions of law have been correctly applied. The ECHR has similarly adopted an approach that the supervisory review procedure is not a remedy that needs to be exhausted for the purposes of admissibility, in *Berdzenishvili v. Russia*, application No. 31697/03.

5.5 The State party does not provide a detailed response to the allegations of torture brought by the authors. In its observations, the State party does not deny the fact that the trial was not fair, that during the trial, the authors were tortured, that the judge could not guarantee a safe and secure environment for defendants, their lawyers, and family members. The State party does not deny threats of violence and violent attacks and assaults that occurred inside and outside of the courtroom. The authors were therefore unable to call witnesses in their defence, did not have adequate time and facilities to prepare for the proceedings, while the law enforcement officers pretended not to see these violations, and did not interfere and prevent this from happening.

5.6 In its general comment No. 32, the Committee stated that the “fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects”.[[19]](#footnote-19) In *Gridin v. the Russian Federation*, the Committee found a violation of article 14 (1) of the Covenant, in a case where the trial court failed to prevent a hostile environment from the public present in the courtroom, which in turn prevented the defence lawyer from conducting an effective cross-examination of witnesses.

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

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

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

6.3 The Committee notes that the State party challenges the admissibility of the communications due to non-exhaustion of the available domestic remedies. The State party has observed in this regard that the authors have failed to file a complaint to the Supreme Court under the supervisory review proceedings as set under article 384 of the Criminal Procedure Code of Kyrgyzstan. In this connection, the Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[[20]](#footnote-20) The Committee notes that in the present case, the State party has not shown whether and in how many cases petitions to the Supreme Court for supervisory review procedures were successful in cases of allegations of torture and ill-treatment. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communications.

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

6.5 The Committee considers that the authors have sufficiently substantiated their claims under article 7, read separately and in conjunction with article 2 (3), and articles 9 (1), 10 (1) and 14 (1) (other than the impartiality and fairness of the court proceedings), 14 (3) (b), (d), (g) and (e) of the Covenant for the purposes of admissibility, and therefore proceeds with their consideration of the merits.

 Consideration of the merits

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

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

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

7.4 The Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant[[21]](#footnote-21). Although the obligation to bring to justice those responsible for a violation of article 7 is an obligation of means, not of result[[22]](#footnote-22), States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities. In this regard, the Committee notes that the State party authorities did not conduct a medical examination of the authors following their torture complaints, and that five of the authors (all authors except Abdumomin and Muradil Abduvaitov, and Bakhodir Zhalalov), provided a report, which was conducted by a private psychiatry expert, who concluded that his findings were consistent with the torture allegations by the authors.

7.5 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the authors of the communication alone, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information,[[23]](#footnote-23) especially when the injuries allegedly occur in the situations where the authors are detained by the State party authorities. In this regard, the Committee notes the statements from the authors detailing the torture they suffered while in detention. These claims were brought to the attention of the prosecutor’s office, and most importantly, the record reflects that the authors complained to the court about torture, both during the trial and the appellate proceedings, but their claims were either ignored or rejected. The Committee notes therefore that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out effectively or that any suspects were identified, despite detailed reports from the authors, witness statements, and a medical report indicating findings of torture. In the absence of detailed explanations from the State party in this respect, due weight must be given to the authors’ allegations, provided they have been sufficiently substantiated. The Committee also notes that the court used the authors’ confessions, among other evidence, in finding the authors guilty, despite their contention made during the trial hearings that they were tortured to elicit this confession. Accordingly, in these circumstances, the Committee concludes that the facts before it disclose a violation of the authors’ rights under article 7, read alone and in conjunction with article 2 (3), and of article 14 (3) (g) of the Covenant.

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

7.7 With respect to the authors’ claims under article 14 (1) of the Covenant, the Committee notes the uncontested facts that the relatives of the defendants, including those of the authors, were not allowed to be present at those hearings. The Committee notes that the State party failed to provide its observations in this regard. The presiding judge during the trial, according to the authors, explained that he could not guarantee the safety of the relatives of the authors (para. 2.10). The Committee recalls provisions of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial that “all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly”.[[24]](#footnote-24) Article 14 (1) of the Covenant acknowledges that courts have the power to exclude all or part of the public “for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.[[25]](#footnote-25) The State party, however, failed to explain why it was necessary to only exclude from the hearings the authors’ relatives under one of the justifications contained in article 14 (1), while the relatives of the victims were able to attend. In the absence of pertinent explanations from the State party, the Committee concludes that the State party applied a disproportionate restriction on the authors’ rights to a fair and public hearing, and therefore the authors’ rights under article 14 (1) have been violated.

7.8 The Committee also examines the authors’ claims that their right to have adequate time and facilities for the preparation of their defence were violated. The Committee notes the authors’ claims that the isolation wards and detention centres were overcrowded and did not have enough lighting and air, to enable the preparation of their defence. Furthermore, the authors claim that on several occasions, relatives of the victims threatened and physically attacked their lawyers inside and outside of the courtroom, and that the police and local prosecutors failed to intervene, creating a general sense of fear that is incompatible with the proper execution of a defence lawyer’s functions. The Committee notes that the State party did not refute evidence, for example, that on 12 October 2010, two persons who introduced themselves as relatives of the victims, threatened the lawyers. The Committee further notes that on 15 October 2010, the lawyers publicly refused to participate in court hearings fearing for their safety and security. In December 2010, one of the lawyers, N.U.R., was attacked and beaten by representatives of one of the victims (para. 2.8). In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the authors’ rights under article 14 (3) (b) and (d) of the Covenant.

7.9 The Committee also notes the authors’ allegations that their trial was characterized by a number of irregularities, such as disorder and violence caused by the relatives of victims attending the trial. The authors further claim that they were not able to call witnesses on their behalf, as the witnesses, who were called, were threatened by the relatives of the victims. In this connection, the Committee recalls, in accordance with its long-standing jurisprudence, that article 14 of the Covenant guarantees the right of accused persons to call and question witnesses. This guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross‑examining any witnesses as are available to the prosecution.[[26]](#footnote-26) The Committee takes note of the fact that the State party failed to provide any information in this regard. In these circumstances, and on the basis of the material before it, the Committee concludes that the State party violated the authors’ rights under article 14 (3) (e) of the Covenant.

7.10 In view of the findings above, the Committee decides not to examine the authors’ claims under article 10 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7 read alone and in conjunction with article 2 (3), and of articles 9 (1), 14 (1), (3) (b) (d) (g) and (e), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: a) quash the authors’ convictions and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; (b) conduct a prompt and effective investigation into the torture allegations of the authors and to prosecute and punish those found responsible; (c) provide the authors with adequate compensation for the violations of their rights. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy if a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

1. \* Adopted by the Committee at its 135th session (27 June – 27 July 2022). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. [↑](#footnote-ref-2)
3. The name of the case derives from cotton processing plant nearby, “SANPA”. [↑](#footnote-ref-3)
4. The author submits that his detention was registered only nine hours later, on the same day. [↑](#footnote-ref-4)
5. The author claims that his arrest was registered only nine hours after the actual detention. [↑](#footnote-ref-5)
6. The author claims that his arrest was registered 12 hours after the actual detention. [↑](#footnote-ref-6)
7. The author claims that his arrest was registered eight hours after the actual detention. [↑](#footnote-ref-7)
8. The author claims that his arrest was registered 34 hours after the actual detention. [↑](#footnote-ref-8)
9. The author claims that his arrest was registered 24 hours after the actual detention. [↑](#footnote-ref-9)
10. The author claims that his arrest was registered 53 hours after the actual detention. [↑](#footnote-ref-10)
11. The author claims that his arrest was registered 34 hours after the actual detention. [↑](#footnote-ref-11)
12. Authors refer to this link: www.osce.org/ru/bishkek/93783 [↑](#footnote-ref-12)
13. The authors claim that following persons were admitted to hospitals after being attacked: grandmother of Islombek Atabekov, and sister of Osmonali Otamirzaev. [↑](#footnote-ref-13)
14. The certificate is not provided by Abdumomin and Muradil Abduvaitov, and Bakhodir Zhalalov. [↑](#footnote-ref-14)
15. On 28 December 2018, the State party submitted joint observations, responding to eight communications under the consideration in this document. [↑](#footnote-ref-15)
16. This author in his submission claims that he was initially detained on 17 June 2010. [↑](#footnote-ref-16)
17. Correct date seems to be, according to the copies of the documents submitted by the authors, 17 June 2014. [↑](#footnote-ref-17)
18. The authors refer to paragraph 7.3 of the Views. [↑](#footnote-ref-18)
19. The authors refer to paragraph 25 of the general comment. [↑](#footnote-ref-19)
20. See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, Schumilin *v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, P.L. v. Belarus, decision of inadmissibility adopted on 26 July 2011, para. 6.2; and No. 2339/2014, *Rizvan Taysumov* *et al*. *v Russian Federation*, CCPR/C/128/DR/2339/2014 views adopted 11 March 2020, para 8.5. [↑](#footnote-ref-20)
21. 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; *Boboev v. Tajikistan*, para. 9.6, and Zhanysbek Khalmamatov v Kyrgyzstan, para. 6.4. [↑](#footnote-ref-21)
22. *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3. [↑](#footnote-ref-22)
23. Communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4. [↑](#footnote-ref-23)
24. See para. 28. [↑](#footnote-ref-24)
25. Ibid., para. 29. [↑](#footnote-ref-25)
26. See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39. [↑](#footnote-ref-26)