



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3261/2018*, **, ***

<i>Communication submitted by:</i>	Rosa Gorbaeva (represented by counsel, S. A.)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	10 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 November 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	23 October 2023
<i>Subject matter:</i>	Torture by law enforcement officers to obtain confession; use of forced confession in court; conditions of detention; incommunicado detention; length of criminal proceedings
<i>Substantive issues:</i>	Torture; unlawful detention; fair trial
<i>Articles of the Covenant:</i>	7, read in conjunction with 2 (3) (a), 9 (1), (2) and (3), 10 (1) and 14 (3) (b), (c), (e) and (g)

1. The author of the communication is Rosa Gorbaeva, a Kyrgyz national born in 1984. She claims that Kyrgyzstan has violated her rights under articles 2 (3) (a), 7, 9 (1), (2) and (3), 10 (1) and 14 (3) (b), (c), (e) and (g) of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 October 1994. The author is represented by counsel.

Factual background

2.1 On 1 March 2013, around 9.30 a.m., the author was apprehended at her home in Mayluu-Suu by the police for questioning concerning the murder of her neighbour. On the same day, a criminal investigation into the case was launched.

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** A joint opinion by Committee members Rodrigo A. Carazo and Carlos Gómez Martínez (partially dissenting) is annexed to the present Views.



Torture by the police

2.2 Upon the author's apprehension on 1 March 2013, she was taken to the Mayлуу-Suu police station. From 9.30 a.m. to 6 p.m., she was subjected to continuous questioning by different officers, who asked the same questions (the so-called carousel tactic). The author's request for a lawyer was denied. At around 3 a.m., the police officers placed a gas mask over her head. To prevent her from losing consciousness, they hit her continuously with batons on her legs, ordering her to confess to the murder. Then the author was secured with handcuffs to a pipe on the wall, which prevented her from lying down. She stayed for 2.5 hours in that position.

2.3 At 8 a.m. on 2 March 2013, the carousel questioning started again. The police officers started threatening to frame the author's husband with drugs and to put her underage daughter in an orphanage. At 5.30 p.m., the police officers took the author to her apartment. While conducting a search, they discovered a hand grenade, which they had previously threatened to plant. At 6 p.m., the author was taken back to the police station, where she signed a confession that had been printed out by the police officers. Throughout the entire time that she spent at the police station, the author was deprived of food and water and was allowed to use the toilet only twice.

2.4 According to the police record, the author was questioned as a suspect on 2 March 2013, from 6 to 7 p.m. Then the police officers drew up a record of detention, noting 9 p.m. on 2 March 2013 as the start time of the author's detention. At 8.30 p.m. on 2 March 2013, the author was transferred to cell No. 5 of the temporary detention facility in Mayлуу-Suu. During the transfer, no medical examination was conducted.

2.5 On 4 March 2013, the Mayлуу-Suu City Court decided to detain the author in pretrial detention for two months, with a start date of 2 March 2013 at 9.00 p.m. A State-appointed lawyer, whom the author met for the first time in court, represented her. The author was too scared to mention in court the torture by the police.

2.6 On 23 March 2013, the author submitted a complaint to the Office of the Prosecutor in Mayлуу-Suu alleging torture by the police. On 25 March 2013, the Prosecutor requested a medical forensic examination to be carried out. On 27 March 2013, medical forensic report No. 3 was drawn up. In the report, it was noted that there were numerous bruises on the author's left leg, which could have been inflicted by a hard, blunt object.¹ It was also noted that the injuries did not correspond to the alleged time of their infliction, at 3 a.m. on 2 March 2013. On 30 March 2013, Dr. O., a consulting doctor in the Mayлуу-Suu temporary detention facility, carried out a physical examination of the author in accordance with the standards contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Three-week old residual marks on the left shin were recorded in the report of the medical examination. On 4 April 2013, the Prosecutor decided not to open a criminal investigation because of the lack of *corpus delicti*. On 12 April 2013, following the author's complaint, the Jalal-Abad Regional Office of the Prosecutor transmitted the case to the head of the Jalal-Abad investigative unit for additional examination.² On 15 April 2013, a second medical forensic examination was requested by the Office of the Prosecutor. No injuries to the author's body were reported in examination report No. 6, dated 17 April 2013.

2.7 On 22 April 2013, the Jalal-Abad investigative unit of the Office of the Prosecutor General refused to open a criminal investigation into the actions of the Mayлуу-Suu city police officers due to the absence of *corpus delicti*.³ On 7 June 2013, an appeal was submitted

¹ The probable time of the infliction of the injuries was not indicated in the report.

² Among other determinations, the Regional Office of the Prosecutor specified that the author's husband and relatives had not been questioned to verify when the author had been apprehended by the police, the author's neighbour, who had indicated a possible alternate suspect in the case, had not been questioned, the possible suspect in question had not been identified or interrogated, bruises had been found on the author's left leg in the medical forensic examination and the officers of the Mayлуу-Suu temporary detention facility had stated in interviews that the author had had frequent quarrels and fights with her cellmate, M. However, M. had not been questioned.

³ The decision indicated, among other issues, that, according to the Mayлуу-Suu police officers, the author had been questioned as a witness on 1 and 2 March 2013, but had not been detained, which

to the Office of the Prosecutor General. On 10 June 2013, the author requested the Mayлуу-Suu City Court to repeal the decision of the Office of the Prosecutor General of 22 April 2013. The City Court rejected the complaint on 8 October 2013, having found that the Office of the Prosecutor General had taken all of the actions necessary to verify the author's complaint. The author's appeal to the Jalal-Abad Regional Court, dated 29 October 2013, was rejected on 17 January 2014. On 28 January 2014, the author submitted a supervisory review appeal to the Supreme Court, which was rejected on 25 March 2014. The author complained about the torture by the police at all stages of her criminal proceedings. The courts and the prosecutors did not respond to her allegations.

Pretrial detention

2.8 From the moment of her apprehension by the police on 1 March 2013, the author was detained in several temporary detention facilities while her case was being considered by the courts.⁴ In each of the author's appeals, her detention was sanctioned by the court. On 29 March 2016, the author was transferred to temporary detention facility No. 5 of the State Penitentiary Service, which was followed by her transfer to prison No. 2, in Stepnoe village, Alamüdüin District, in the Chüy Region.

2.9 In all the facilities, the author was held in a series of small cells, sometimes located in the basement. There was no access to daylight or fresh air and no ventilation. The artificial light was dim, which made it impossible to read, and it remained on at all times. The cells were humid and mouldy. No cleaning products were supplied to clean the cells and there were fleas, bedbugs and cockroaches. During the winter, it was cold and, in the summer, it was hot. The author was not given any bedding, except a dirty mattress. The toilet facilities, sometimes just a bucket, were in the cell and were not hidden from the rest of the room. The person using the toilet was visible to everyone, including the guards, who were men. The shower was not equipped with a door and the person using it was visible to the male guards. There was no access to television, newspapers or any other sources of information. The small open-air yards were not equipped for any activity and the author was taken for a walk each day lasting some 15 minutes. In some facilities, hot meals were served only once a day and not on the weekends. During her detention in the Mayлуу-Suu facility, the author complained 23 times about the state of her health. Since the detention facility did not have any medical staff, on seven occasions, she was taken to the Mayлуу-Suu city hospital for treatment. In the Jalal-Abad temporary detention facility, the author requested medical assistance eight times. In the Tash-Kömür detention facility, she asked for medical attention twice.

2.10 On 5 June 2015, the author requested the Jalal-Abad Regional Office of the Prosecutor to carry out an inspection of the conditions in the temporary detention facilities in which she had been held starting on 2 March 2013. On 4 August 2015, the Regional Office of the Prosecutor informed the author that her request had been redirected, on 9 June 2015, to the Jalal-Abad Regional Office of the Interior. The author did not receive a reply from the Regional Office nor did the conditions of detention improve.

2.11 On 18 December 2015, the author submitted a civil complaint to the Jalal-Abad City Court asking the court to find the detention conditions in the Jalal-Abad temporary detention facility degrading and discriminatory based on sex.⁵ On 18 February 2016, the City Court rejected the author's complaint, having accepted the arguments of the Office of the

was confirmed by the author's explanatory notes and the records of the questioning. On 2 March 2013, she had been arrested as a suspect. The second possible suspect, J., had been questioned. The results of medical forensic examination No. 3 of 27 March 2013 had indicated that the age of the bruises on the author's leg did not correspond to the time of infliction alleged by her (3 a.m. on 2 March 2013). No injuries had been recorded in medical forensic report No. 6 of 17 April 2013. From 2 to 28 March 2013, several inspections had been carried out by the Office of the Prosecutor and the Spravedlivost organization, but the author had never complained about physical violence by the police. B., who had shared a cell with the author since 16 March 2013, had stated that the author had not mentioned ill-treatment by the police.

⁴ The author was detained in the Mayлуу-Suu, Jalal-Abad, Tash-Kömür, Nooken, Bazar-Korgon and Batken temporary detention facilities.

⁵ The author pointed out, in particular, that there were no female officers in the facility and that she was searched and monitored by male officers.

Prosecutor and the Ministry of the Interior, without providing any reasoning. On 7 May 2016, the Jalal-Abad Regional Court repealed the decision of the City Court and returned the case for reconsideration. On 27 June 2016, the Jalal-Abad City Court rejected the author's complaint on the grounds that it could not be considered to be within the framework of civil proceedings. The Court did not specify which proceedings should be adhered to. On 26 July 2016, the Jalal-Abad Regional Court rejected the author's appeal dated 7 July 2016 and indicated that the complaints concerning the conditions of detention should be directed to the Office of the Prosecutor. On 30 January 2017, the Supreme Court rejected the author's supervisory review appeal, which had been submitted on 6 December 2016.

2.12 On 21 December 2015, the author submitted a complaint to the Tash-Kömür City Court concerning the detention conditions in the Tash-Kömür temporary detention facility. On 20 June 2016, the City Court returned the complaint without consideration, stating that the author had not exhausted all pretrial means of settling the dispute by submitting a complaint to the Office of the Prosecutor, which was responsible for supervising places of detention, and that it was still possible to do so. The author's appeal of 20 June 2016 to the Jalal-Abad Regional Court and her supervisory review appeal of 6 December 2016 to the Supreme Court were rejected on 26 July 2016 and 30 January 2017, respectively.

2.13 In view of the court decisions concerning the conditions of her detention in the Jalal-Abad and Tash-Kömür temporary detention facilities, the author did not resort to judicial remedies concerning the conditions of detention in other facilities.

2.14 On 16 May 2017, the author lodged a civil suit for moral damages with the Ministry of Finance in the Pervomaysky District Court in Bishkek. On 17 May 2017, the Court returned the complaint, because the author had failed to provide a court decision confirming wrongdoing by the defendant. The author appealed to the Bishkek City Court on 22 May 2017. The appeal was rejected on 30 May 2017, with no possibility of further appeal.

Court proceedings

2.15 On 23 April 2013, the investigation into the criminal case was completed. On 27 April 2013, the Mayлуу-Suu City Prosecutor transmitted the case to court. On 29 April 2013, the case was brought before the Mayлуу-Suu City Court. On 26 June 2013, the Mayлуу-Suu City Court found the author guilty of committing murder and sentenced her to 15 years of imprisonment. On 1 July 2013, the author filed an appeal with the Jalal-Abad Regional Court. On 6 August 2013, the Jalal-Abad Regional Court sent the case back to the Prosecutor for further investigation.⁶ On 3 December 2013, the Supreme Court, upon the request of the victim's representative, referred the case to the Jalal-Abad Regional Court for a new appellate review with a different composition of judges.⁷ On 11 February 2014, the Jalal-Abad Regional Court again sent the case back to the Office of the Prosecutor for additional investigation.⁸

2.16 On 19 May 2014, the case came to the Tash-Kömür City Court for substantive consideration. On 22 May 2014, the Tash-Kömür City Court returned the case to the Office of the Prosecutor for additional investigation.⁹ On 18 September 2014, the Jalal-Abad

⁶ The court found, among other issues, that the other suspect in the case, J., had not been properly investigated and that the author's jacket, which allegedly had blood stains on it, had been unlawfully confiscated by the police, without court sanction. The author's fingerprints were not on the alleged murder tools. The wounds on the murdered victim's head, according to the medical forensic examination of the body, had not been inflicted by a kitchen knife, as had been suggested in the report of the investigation.

⁷ The Supreme Court stated that requesting an additional investigation was a measure of last resort, to be used in cases where the court had not been able to fill in the gaps in the investigation in the court proceedings. The Jalal-Abad Regional Court could, as an appellate court, clarify the outstanding ambiguities itself, without requesting an additional investigation.

⁸ The Court found, among other issues and in addition to the previously identified gaps in the investigation, that the investigative actions had been carried out on the basis of the arbitrary conclusion of the investigator that the victim's death had occurred at 8.30 a.m., while, according to the medical forensic report, the death must have occurred at around 1 p.m., and that the investigation had not resulted in the identification of the fingerprints found at the crime scene.

⁹ The City Court identified the same gaps as the previous courts.

Regional Court rejected the appeal submitted by the Office of the Prosecutor. On 18 September 2014, however, the case was transmitted to the Nookan District Court of the Jalal-Abad region due to the self-recusal of one of the judges.¹⁰

2.17 On 4 March 2015, the Nookan District Court found the author guilty and sentenced her to 12 years of imprisonment. On 9 April 2015, the Jalal-Abad Regional Court, acting as an appeal court, returned the case to the Prosecutor for further investigation.¹¹ On 10 June 2015, the Supreme Court, upon the Prosecutor's supervisory review appeal, returned the case to the Jalal-Abad Regional Court for a new appellate review with a different composition of judges. On 15 August 2015, the Supreme Court transmitted the case to the Batken Regional Court, due to the impossibility of forming a new composition of judges at the Jalal-Abad Regional Court. On 29 March 2016, the Batken Regional Court, acting as an appellate court, upheld the author's prior conviction but reduced her remaining prison sentence by one fourth. On 3 October 2016, the author was granted early conditional release by the Alamüdü District Court.

Complaint

3.1 The author alleges that she was subjected to incommunicado detention from 1 to 2 March 2013 and that, during that time, her relatives were not informed of her whereabouts and she did not have access to a lawyer. She submits that she was subjected to physical and psychological torture by the police on 1 and 2 March 2013. She claims a violation of article 7 of the Covenant on those grounds.

3.2 The author claims that the investigation of her allegations of torture was not effective. The preliminary examination, carried out by the Office of the Prosecutor, was superficial. The prosecutors limited themselves to questioning the police officers in the Mayлуу-Suu temporary detention facility. They did not interview witnesses, who could have seen the traces of torture, or the doctor who had conducted the medical forensic examination on 27 March 2013. The courts supported the prosecution's findings and rejected the author's appeals. The author claims that her rights under article 7, read in conjunction with article 2 (3), of the Covenant have been violated.

3.3 The author submits that the fact of torture by the police in the Mayлуу-Suu temporary detention facility violated her right to security of person under article 9 (1) of the Covenant. She complains that her incommunicado detention from 9.30 a.m. on 1 March 2013 to 5.30 p.m. on 2 March 2013 and her lack of access to lawyer, having seen a lawyer for the first time in court on 4 March 2013, violated her rights under article 9 (2) of the Covenant. In violation of article 9 (3) of the Covenant, the author was brought before a judge more than 48 hours after her arrest on 1 March 2013.

3.4 The author claims that the poor conditions of detention in the temporary detention facilities in which she was held violated her rights under article 10 (1) of the Covenant.

3.5 The author claims that the court proceedings were unduly prolonged, in violation of article 14 (3) (c) of the Covenant. While the case was being considered by the courts, she was held in detention. The author submits that, under article 252 of the Criminal Procedure Code of Kyrgyzstan, the courts have two months in which to decide on the case when it relates to grave and particularly aggravated crimes. The author submits that the judicial proceedings in her case lasted 1,124 days.

3.6 The author alleges that her rights under article 14 (3) (e) of the Covenant were violated because witnesses who could have supported her statements were not questioned and the author was not able to question witnesses who had provided contradictory statements.

¹⁰ On 12 September 2014, the criminal case was submitted for consideration to the Tash-Kömür City Court. However, after the self-recusal of Judge K., the Jalal-Abad Regional Court had to send the case to the Nookan District Court.

¹¹ Having listed the gaps left outstanding by the investigation, the Court stated that the confession signed by the author was not enough to find her guilty. It needed to be corroborated and crossed-checked by other evidence.

3.7 The author submits that she was forced by the police to confess to committing a crime, in violation of article 14 (3) (g) of the Covenant. The State party did not react to the author's allegations of torture either during the investigation or in the courts. The courts failed to exclude her forced confession from evidence in the case.

3.8 The author asks the Committee to request the following remedies from the State party: that it carry out a prompt and effective investigation into all her complaints of torture and intimidation; identify and hold accountable the perpetrators; and provide her with full and adequate compensation and rehabilitation for the harm caused by the torture and the violation of her right to a fair trial. She also asks the Committee to recommend that the State party prevent similar violations by establishing an effective and independent mechanism for investigating complaints of torture, in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and by introducing relevant amendments to the Criminal Procedure Code to bring it into compliance with the standards set out in the Principles for the effective investigation of human rights violations.

State party's observations on admissibility and the merits

4.1 On 10 March 2020, the State party submitted its observations on admissibility and the merits of the communication.

4.2 After summarizing the criminal proceedings in the author's case, the State party addresses her allegations concerning the conditions of her detention in the temporary detention facilities in Mayлуу-Suu, Jalal-Abad, Tash-Kömür, Nooken, Bazar-Korgon and Batken. According to the State party, the author did not file complaints with the Office of the Prosecutor in Batken concerning the conditions of her detention in the Batken temporary detention facility. During her detention in the Jalal-Abad facility, she submitted three complaints.

4.3 The State party submits that the author submitted 8 health-related complaints during her detention in the Jalal-Abad temporary detention facility, 2 complaints during her detention in the Tash-Kömür facility and 23 complaints during her detention in the Mayлуу-Suu facility. The author connected her illnesses to the poor conditions of detention and to discrimination based on sex. In the Mayлуу-Suu facility, the medical personnel concluded nine times, after examining the author, that she was "basically healthy". On other occasions she was diagnosed with illnesses unrelated to the conditions of detention, such as chronic gastritis, a neurasthenia-related allergic reaction, a self-inflicted wound on the shoulder and cystitis. She received medical assistance every time she requested it and was treated with medication. She was transferred for ambulatory treatment to the Mayлуу-Suu city hospital seven times.

4.4 The State party provides a detailed description of the Mayлуу-Suu temporary detention facility, which contains four detention cells: two cells measuring 16.8 m² and two cells measuring 6 m². All of the cells are equipped with ventilation, radio sets, a first-aid kit and monitoring cameras and conform to hygiene and sanitation requirements. The detained persons are provided with bed linens, dishes, books and table games. Every week, the Mayлуу-Suu sanitary-epidemiological station inspects the detention facility and records the results of the inspections. There is a schedule of open-air time for the detained persons. During the author's detention in the Mayлуу-Suu facility, the Office of the Prosecutor carried out weekly inspections of the detention conditions. Monitoring was also carried out several times by the Spravedlivost organization. The author did not complain about the poor conditions of detention during those inspections.

4.5 The author's complaint concerning the detention conditions in the Nooken detention facility was transmitted to the Nooken District Office of the Prosecutor on 10 November 2014. Having carried out an inspection, the Office of the Prosecutor reported the detention of six women. The searches of the female detainees had been performed by two female officers.

4.6 The State party submits that the State allocated 29,020 som from 2013 to 2019 for improving the conditions in temporary detention facilities.

4.7 The State party proceeds to list the judicial remedies exhausted by the author concerning her claims regarding the conditions of detention. The State party submits that, according to the national legislation, the monitoring of places of detention rests with the Office of the Prosecutor and that the courts correctly rejected the author's complaints. It also indicates that the author did not raise complaints concerning other detention facilities. The State party concludes that the author's allegations of poor conditions of detention could not be confirmed.

4.8 On 23 March 2013, the author submitted a complaint concerning torture by the Mayлуу-Suu police to extract a confession. On 27 March 2013, a medical forensic examination identified bruises on the author's left leg. The time of infliction of the injuries could not be established due to their age. On 22 April 2013, the Office of the Prosecutor General, Jalal-Abad unit, decided not to open a criminal investigation into the case.

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

5.1 On 1 September 2020, the author responded to the State party's observations, claiming that the State party had addressed only the author's claims concerning the conditions of detention, but not the rest of allegations.

5.2 The author maintains her claim that the preliminary examination, following her allegations of torture by the Mayлуу-Suu police, was ineffective and superficial. The author had provided details of when, how and by whom the torture had been inflicted. Medical reports had confirmed injuries to her left leg, yet the Office of the Prosecutor, having questioned the Mayлуу-Suu police officers, who denied that torture had occurred, had refused to open a criminal investigation. The author alleges that only a criminal investigation, not a preliminary examination, can provide full procedural guarantees to address allegations of torture. The Prosecutor's refusal to open a criminal investigation deprived her of procedural rights as a victim and of effective remedies.

5.3 Regarding the conditions of detention in the five temporary detention facilities in which she was held, the author submits that the Regional Department of the Interior of Jalal-Abad confirmed, in response to her complaints set out in letter No. 13/3236 of 17 June 2015, that the conditions of detention in the Jalal-Abad temporary detention facility did not comply with the requirements set out in the national legislation. It also confirmed that there were no female officers in the Tash-Kömür, Jalal-Abad, Mayлуу-Suu, Nooken or Bazar-Korgon detention facilities. The female officers in the Nooken detention facility referred to by the State party were not permanently employed in the facility and performed only one search of the author. The author also refers to the annual reports of 2013 and 2014 of the national preventive mechanism of Kyrgyzstan, in which the inadequate conditions of detention in the temporary detention facilities in question are confirmed.¹² The refusal of the courts to consider the author's complaints indicate a lack of judicial remedies concerning poor conditions of detention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication 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 the author's claim that she has exhausted all available legal domestic remedies. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

¹² See <https://npm.kg/ru/ezhegodnye-doklady-ntspp-kr>.

6.4 The Committee finds that the author has not provided sufficient details to substantiate her claims under article 7 of the Covenant relating, in part, to her incommunicado detention on 1 and 2 March 2013. The Committee notes the author's claims, brought under article 9 (1) of the Covenant, that torture by the police in the Mayлуу-Suu temporary detention facility violated her right to security of person. It also notes the author's claim under article 9 (2) concerning her incommunicado detention and lack of access to a lawyer in the Mayлуу-Suu temporary detention facility on 1 and 2 March 2013. The Committee notes that the author does not substantiate how her claims fall under article 9 (1) and (2) of the Covenant. The Committee also notes that the author's claim concerning the violation of article 14 (3) (b) of the Covenant is not supported by any explanation. It further notes that the author's submission that she was not able to question witnesses in her case, in violation of article 14 (3) (e) of the Covenant, provides no specific details. The Committee, therefore, finds the author's claims under article 7, in part relating to incommunicado detention, article 9 (1) and (2) and article 14 (3) (b) and (e) insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that author has sufficiently substantiated the remaining claims under article 7, read alone and in conjunction with articles 2 (3) (a), 9 (3), 10 (1) and 14 (3) (c) and (g), of the Covenant. It therefore declares those claims admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee notes the author's allegation that the State party violated her rights under article 7 of the Covenant when she was tortured by the Mayлуу-Suu police officers on 1 and 2 March 2013 to obtain her forced confession to a murder. In that regard, the Committee notes that the author provides a detailed account of the ill-treatment to which she was subjected. The author provides a copy of medical forensic report No. 3, dated 27 March 2013, which confirms bruises on her left leg that, it is stated in the report, could have been inflicted by hard, blunt objects. She also provides the report of Dr. O. of 30 March 2013 in which residual three-week old marks on the author's left leg were recorded. The Committee notes that, in its decision of 22 April 2013, the Office of the Prosecutor General referred to the fact that, according to medical forensic examination No. 3 of 27 March 2013, the age of the bruises on the author's leg did not correspond to the alleged time of their infliction. The Office of the Prosecutor General also took into account medical forensic report No. 6 of 17 April 2013, in which no injuries had been recorded. The Committee notes that the Office of the Prosecutor General did not take into account the medical report of Dr. O., drawn up on 30 March 2013, which contained the conclusion that the bruises on the author's leg could have been inflicted three weeks earlier. The Committee also notes the State party's submission, in which the State party refers to the decision of 22 April 2013 by the Office of the Prosecutor General not to open a criminal investigation into the author's case.

7.3 The Committee recalls that a State party is responsible for the security of any person that it holds in detention and that, when an individual in detention shows signs of injury, it is incumbent upon the State party to produce evidence showing that it is not responsible for such injury.¹³ The Committee has held on several occasions that the burden of proof in such cases cannot rest with the author of a communication alone, especially considering that, frequently, only the State party has access to the relevant information.¹⁴ In view of unreconciled information concerning the timing of the author's injuries and the absence of information about the possible origin of those injuries from the State party, the Committee decides that due weight must be given to the author's detailed allegations of the cause of her injuries. The Committee therefore decides that the facts as submitted reveal a violation of the author's rights under article 7 of the Covenant.

¹³ *E.S. v. Kyrgyzstan* (CCPR/C/133/D/2850/2016), para. 8.3; and *Usekeev v. Kyrgyzstan* (CCPR/C/130/D/3000/2017), para. 7.3.

¹⁴ *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and *Bleier v. Uruguay*, communication No. 30/1978, para. 13.3.

7.4 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and the consequential prosecution are necessary remedies for violations of human rights, such as those protected under article 7 of the Covenant.¹⁵ The Committee also recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.¹⁶

7.5 In the present case, the Committee notes that, on 23 March 2013, the author complained to the Office of the Prosecutor in Mayлуу-Suu about her incommunicado detention from 1 to 2 March 2013 and torture by the police. Without delay, the Office of the Prosecutor ordered a medical forensic examination, which was carried out on 26 and 27 March 2013. The Committee notes, however, that the Office of the Prosecutor refused to open a criminal investigation on 4 April 2013 because the time of infliction of the injuries found on the author's left leg by medical report No. 3 could not be established. At the same time, it is mentioned in the report that the author had had quarrels and fights with her cellmate, M., in the Mayлуу-Suu temporary detention facility. As reflected in the decision of 12 April 2013 by the Jalal-Abad Regional Office of the Prosecutor, which referred the case for additional examination, the Mayлуу-Suu Office of the Prosecutor had failed to question the author's cellmate, M., to clarify the possible origin of the author's bruises. They had also failed to question the author's husband and relatives and the police officers and had not checked the police records to establish the date of the author's apprehension.

7.6 In the additional examination, the Prosecutor questioned the police officers who had apprehended the author. They reported that the author had been questioned as a witness on 1 and 2 March 2013, without being detained, which was confirmed by the author's explanatory notes and the interrogation record dated 2 March 2013. Neither the author's relatives nor her cellmate, M., had been questioned. After the additional examination, the Office of the Prosecutor General refused to open a criminal investigation. That decision was upheld by the courts. The Committee notes that the author's allegations of incommunicado detention on 1 and 2 March 2013 and her allegations of torture by the police were left without substantive investigation. The Office of the Prosecutor General did not clarify the origin of her injuries. It accepted the statements of the police officers, whom the author had accused of torturing her, that she had not been detained on 1 and 2 March 2013, without questioning other possible witnesses of her apprehension. The Committee concludes that the State party violated the author's rights under article 7, read in conjunction with article 2 (3) (a), of the Covenant.

7.7 The Committee notes the author's claim that she was not brought promptly before the judge after her arrest on 1 March 2013, in violation of article 9 (3) of the Covenant. The Committee recalls its general comment No. 35 (2014) on liberty and security of person according to which an arrested person should be brought before a judge within 48 hours.¹⁷ According to the same general comment, arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. In the present case, the author was arrested on 1 March and brought before a judge on 4 March 2013, therefore exceeding the 48-hour time limit. In the absence of information from the State party on the circumstances of the author's arrest and her detention on 1 and 2 March 2013, the Committee finds that the facts before it reveal a violation of article 9 (3) of the Covenant.

7.8 The Committee notes the author's claim that the poor conditions of detention in the temporary detention facilities in which she was held violated her rights under article 10 (1) of the Covenant. The Committee also notes that the author was detained from 1 March 2013 to, at least, 29 March 2016, when she was transferred to temporary detention facility No. 5 of the State Penitentiary Service to be subsequently transferred to prison. She was detained in the Mayлуу-Suu, Jalal-Abad, Tash-Kömür, Bazar-Korgon, Nooken and Batken temporary detention facilities. All of the facilities had poor conditions, including a lack of furniture, bedding, heat, ventilation and natural light, poor hygiene, including a lack of proper toilet

¹⁵ General comment No. 20 (1992), para. 14; and general comment No. 31 (2004), para. 18.

¹⁶ General comment No. 20 (1992), para. 14; and *Neporozhnev v. Russian Federation* (CCPR/C/116/D/1941/2010), para. 8.4.

¹⁷ General comment No. 35 (2014), paras. 32 and 33.

facilities, and a lack of privacy from monitoring when using the toilet and the shower. The conditions of detention caused the author to suffer health problems, of which she complained 33 times (see para. 4.3 above). The Committee also notes the author's claim that all of the officers in the detention facilities were male. They were the ones who searched and monitored her. The Committee notes that, although the State party contested the information provided by the author, it did not provide any documentary support for its submission. At the same time, the author's allegations are consistent with the findings of national and international monitoring mechanisms.¹⁸

7.9 The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and they must be treated humanely in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹⁹ The Committee considers, as it has repeatedly found in respect of similar substantiated claims,²⁰ that the author's conditions of detention, as described by the author, violated her right to be treated with humanity and with respect for her gender and the inherent dignity of the human person and were therefore also contrary to article 10 (1) of the Covenant. For these reasons, the Committee finds that the conditions of the author's detention, as described by the author, constitute a violation of article 10 (1) of the Covenant.

7.10 The Committee notes the author's allegation that there is no effective remedy in Kyrgyzstan regarding conditions of detention. When she initiated civil proceedings to find the conditions of her detention inhuman and discriminatory, the Jalal-Abad and Tash-Kömür city courts, the Jalal-Abad Regional Court and the Supreme Court refused to initiate proceedings for lack of jurisdiction, indicating that national legislation provided for an out-of-court procedure for the consideration of complaints regarding conditions of detention, namely through the Office of the Prosecutor. The Committee notes, however, that the Jalal-Abad Regional Office of the Prosecutor, having received the author's complaint, dated 5 June 2015, concerning the conditions of detention in the Jalal-Abad temporary detention facility, forwarded it to the Jalal-Abad Regional Office of the Interior. The Committee notes the author's allegation that the conditions of her detention did not improve after the complaint was lodged. Finally, the Committee notes that the author's claim for damages against the Ministry of Finance was rejected by the Pervomaysky District Court in Bishkek and the Bishkek City Court, because the defendant's guilt had not been confirmed by a court decision.

7.11 The Committee reiterates the importance that it attaches to States parties establishing appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to paragraph 15 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it stated that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the information before the Committee indicates that the out-of-court (administrative) procedure was not an effective remedy and that the national courts refused to initiate proceedings for lack of jurisdiction. The Committee concludes that the author's rights under article 10 (1), read in conjunction with article 2 (3) (a), of the Covenant have been violated.²¹

7.12 The Committee notes the author's allegation that the court proceedings in her criminal case lasted for 1,124 days and were unduly prolonged, in violation of article 14 (3) (c) of the

¹⁸ See the 2014 annual report of the national preventive mechanism of Kyrgyzstan, available at <https://npm.kg/ru/ezhegodnye-doklady-ntspp-kr>; and the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan (CAT/OP/KGZ/1). In the report of the Subcommittee, it was noted, among other issues, that temporary detention facilities around the country had limited space and were located in underground facilities, without natural light and ventilation and with very bad hygienic conditions. The Subcommittee had also observed inadequate conditions for bedding, with a lack of mattresses and blankets.

¹⁹ *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3; and *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2.

²⁰ *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.

²¹ *Bobrov v. Belarus*, para. 8.4.

Covenant. The Committee refers to paragraph 35 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it states that, in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. That guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.²² The Committee notes that the author was charged on 2 March 2013 and that her conviction was upheld, after three rounds of proceedings, on 29 March 2016. Although none of the court hearings were excessively long, the case was returned for further investigation to the Office of the Prosecutor four times (see paras. 2.15–2.17 above). The Committee also notes the conclusion of the Supreme Court of 3 December 2013 that the appeal court could have filled the gaps left by the investigation during the court hearing, instead of sending the case back to the Office of the Prosecutor (see para. 2.15 above). The Committee further notes that some of the gaps in the investigation, identified by four courts, were identical. Such overlap points to the repetitive shortcomings in the investigation, which delayed the entire proceeding. The Committee refers to its previous jurisprudence, according to which the burden of proof for justifying any delay and showing that a case was particularly complex rests with the State party.²³ In the absence of any information from the State party to clarify the relevant details regarding the author's claims, the Committee cannot conclude that the criminal proceedings were conducted without undue delay by the administrative and judicial authorities. The Committee finds, therefore, that the State party violated the author's rights under article 14 (3) (c) of the Covenant.

7.13 The Committee notes the author's claim that the forceful extraction of her confession by the police, in the absence of a lawyer, and its use in court violated her rights under article 14 (3) (g) of the Covenant. The Committee recalls its previous jurisprudence that the provision in article 14 (3) (g) of the Covenant that, in the determination of any criminal charge against him or her, everyone shall be entitled not to be compelled to testify against him or herself or to confess guilt, must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt.²⁴ The Committee also recalls that, in cases involving allegations 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.²⁵ The Committee notes the position of the State party that the author's allegations of torture could not be confirmed by the Office of the Prosecutor (see para. 4.8 above). The Committee observes that the courts used the author's confession, among other evidence, in finding her guilty, despite her contention that the confession had been obtained under duress. In the circumstances of the present case, and in view of the finding of a violation of article 7 (see para 7.3 above), the Committee concludes that the facts before it disclose a violation of article 14 (3) (g) of the Covenant.²⁶

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 the author's rights under article 7, read alone and in conjunction with articles 2 (3) and 9 (3), article 10 (1), read alone and in conjunction with article 2 (3), and article 14 (3) (c) and (g) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author 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 conduct a prompt and impartial investigation into the author's allegations of torture and, if the allegations are confirmed, to have the persons responsible prosecuted and to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

²² General comment No. 32 (2007), para. 35.

²³ *Smantser v. Belarus* (CCPR/C/94/D/1178/2003), para. 10.4.

²⁴ *Adamovich v. Belarus* (CCPR/C/133/D/2619/2015), para. 7.8; and *Tashtanova v. Kyrgyzstan* (CCPR/C/137/D/2723/2016), para. 9.8.

²⁵ General comment No. 32 (2007), para. 41.

²⁶ *Tashtanova v. Kyrgyzstan*, para. 9.8; and *Tyan v. Kazakhstan* (CCPR/C/119/D/2125/2011), para. 9.4.

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 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 have them widely disseminated in the official languages of the State party.

Annex

[Original: Spanish]

Joint opinion of Committee members Rodrigo A. Carazo and Carlos Gómez Martínez (partially dissenting)

1. The only aspect of the Views with which we disagree is the violation of article 14 (3) (g) of the Covenant that the Committee considers to have occurred but that, in our opinion, was the subject of an insufficiently substantiated claim that should therefore have been found inadmissible.
 2. The author claimed to have been subjected to torture at the police station which the Committee, in the present Views, considers to constitute a violation of article 7 of the Covenant, read in isolation and also in conjunction with article 2 (3). The torture allegedly resulted in her forced confession.
 3. However, the author does not clearly allege that this forced confession was taken into account as inculpatory evidence by the convicting court, as would be essential in order to find a violation of a human right of a procedural nature such as the right enshrined in article 14 (3) (g) of the Covenant.
 4. Moreover, the author does not request a retrial by way of reparation, a fact that reinforces our opinion that this allegation was not sufficiently substantiated and, consequently, should have been found inadmissible under article 2 of the Optional Protocol.
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