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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2231/2012* **

<i>Submitted by:</i>	Azimjan Askarov (represented by counsel from the Open Society Justice Initiative)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	12 November 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 December 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	31 March 2016
<i>Subject matter:</i>	The author was tortured and denied fair trial procedural guarantees
<i>Procedural issue:</i>	non-exhaustion of domestic remedies
<i>Substantive issues:</i>	torture; fair trial; fair trial – legal assistance; arbitrary arrest – detention; conditions of detention; discrimination of the ground of ethnic origin.
<i>Articles of the Covenant:</i>	2; 7, separately, and in conjunction with article 2 (3); 9 (1); 10 (1); 14 (1), (2), (3) (b), (e), (5); 19 and 26.
<i>Article of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

1. The author of the communication is Mr. Azimjan Askarov, a Kyrgyz national born in 1951. He claims that the State party has violated his rights under article 2; article 7, separately, and in conjunction with article 2 (3); article 9, paragraph (1); article 10, paragraph 1; article 14, paragraphs (1), (2), (3) (b), (e) and (5); article 19 and 26, of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

The facts as submitted by the author

2.1 The author, an ethnic Uzbek, is a human rights defender in Kyrgyzstan. For more than 10 years he has documented human rights violations by the police and prison authorities in his home town, Bazar-Korgon, and other parts of the Zhalal-Abad region. On 15 June 2010, he was detained in the aftermath of ethnic violence in southern Kyrgyzstan. He was accused of numerous crimes, including complicity in the murder of a police officer on the morning of 13 June 2010, and was detained at the same police station where the police officer in question had worked.

2.2 The author claims that, at the police station, following his apprehension on 15 June 2010, he was repeatedly beaten during his first four days of detention, and the police humiliated him and referred to his human rights work, with statements such as “Because of the articles criticizing us, we will get even with you. We will make you die slowly. Now we have the opportunity and the time to punish you” and “Now it is your turn to serve us.” He was denied access to a lawyer and was interrogated at least 11 times as the police attempted to coerce him into testifying against leaders of the Uzbek community in Kyrgyzstan.

2.3 The author submits that at one point, he was repeatedly hit on the head with a pistol and forced to clean up his own blood. The police also threatened to have his wife and daughter raped in front of him. His detention was not registered for nearly 24 hours, even though article 95 of the Kyrgyz Criminal Procedure Code requires registration within three hours of detention. On the third day of interrogation, the local prosecutor in charge of the investigation, Ms. Turazhanova, criticized the police for the fact that they still had not obtained the information that she said she needed.

2.4 The author submits that on 17 June 2010, the prosecutor filed criminal charges against him, alleging that he had instigated ethnic hatred, had incited disorder, and had incited the crowd to attack the police officer who died as a result of the attack. The court ordered the author’s pre-trial detention at a hearing at which both the judge and prosecutor declared that his guilt was already proven. The author was provided a state-appointed lawyer, Mr. Myrzakulov, but the lawyer did not defend the author’s interests. To the contrary, he accused the author of being disrespectful to the police and the prosecutor in the past by writing articles criticizing their work. Ultimately, seven other co-defendants from Bazar-Korgon were also detained and charged with participating in the disorder, the death of the police officer, or both.

2.5 The author was detained by the police in the deceased officer’s police station in Bazar-Korgon for two months. He had no access to a lawyer until a colleague visited him a week after his detention and discovered that he was being tortured. Even when a prominent human rights lawyer from Bishkek, Mr. N. Toktakunov, joined the defense team, the police and the prosecutor refused to allow him to meet the author in private and withheld information necessary to prepare for his defense. On several occasions,¹ relatives of the dead police officer physically attacked the author's lawyer on the premises of the police

¹ The author submits that his lawyer was first attacked on 23 June 2010, when the relatives of the deceased police officer threatened him with violence if he continued to defend Mr. Askarov.

station and the prosecutor's office while the police and local prosecutors refused to intervene. The police terminated one of the lawyer's only private meetings with the author after ten minutes, and throughout the entirety of the two-month investigation they had less than two hours together to discuss the case.

2.6 The author claims that he and his seven co-defendants district court trial, which commenced on 2 September 2010, were flagrantly unfair and amounted to a denial of justice. The author's lawyer, Mr. Toktakunov, was not able to participate in the first day of the trial because he was only notified of the hearing the night before it commenced, despite living 10 hours-drive away.² The author pleaded not guilty to all charges, as he had been at home when the policeman was killed, but the court did not permit his lawyers to present evidence in support. In the absence of the author's lawyer, on 2 September 2010, the court heard 16 prosecution witnesses, including 14 police officers from the Bazar-Korgon police station.

2.7 The author submits that relatives of the deceased police officer constantly threatened and intimidated the author's defense team, his seven co-defendants, and potential witnesses inside and outside the courtroom. These relatives threatened, for example, that they "hired killers for every defense lawyer" participating in the hearings. The presiding judge made no effort to protect defense counsel or maintain order in the courtroom. The atmosphere of intimidation in the courtroom prevented defense counsel from making legal applications, calling defense witnesses, or cross-examining prosecution witnesses.

2.8 The author and his co-defendants were also beaten during the trial. After the first hearing, police opened the cage in which they were held and beat them directly in the courtroom. Later that evening, twenty police officers beat the author and the other defendants, who were handcuffed and unable to protect themselves, for several hours in the backyard of the police station where they were held during the trial. While beating them, the officers told them they must remain quiet and only give "yes" and "no" answers at the court room.

2.9 Without considering any evidence presented by the defense, the District Court held the last hearing on 8 September 2010. During this last hearing, the lawyer, Mr. Toktakunov, reiterated that the author was tortured. He also complained about lack of adequate access to his client and lack of access to the criminal case file. On 15 September 2010, the District Court found the author guilty of instigating ethnic hatred, inciting disorder, and complicity in the murder of the police officer, as well as attempted murder of other officers, calling for the mayor to be taken as a hostage, and possession of 10 rounds of ammunition. The court sentenced him to life imprisonment. It also convicted all seven of his co-defendants, sentencing four to life imprisonment and the other three to prison terms of between nine and 20 years.

2.10 Lawyers for the author and his co-defendants appealed the convictions to the Zhalal-Abad Regional Court, and on 9 October 2010, the author and his co-defendants were transferred to Suzak police station in preparation for the appeal hearings. On arrival at the station, they were taken to the backyard, forced to remove their clothing, and beaten by police officers wearing black masks who told the author "if you did not write against the police ... we would not be beating you".

2.11 On 23 October, new location for the appeal hearing was designated, and it took place in the courthouse in Tash-Kumyr village. Upon arrival at the police station there, the author's medication was confiscated and his co-defendants were again stripped and beaten by masked police officers. After one day of hearings in Tash-Kumyr, the location was again

² Counsel resided in Bishkek.

changed, to the courthouse in Nookan village. The appeal hearings before the Zhalal-Abad Regional Court in both Tash-Kumyr and Nookan were characterized by violations similar to those which occurred at the trial. In addition, relatives of the deceased officer shouted at and threatened the defense lawyers during the hearings.

2.12 The author submits that they also threatened potential defense witnesses, and even the police advised potential witnesses not to attend the hearing. As a result, the defense lawyers were again unable to call and examine witnesses. On 10 November 2010, the Appeal Court rejected the appeals and upheld the sentences of the trial court. The author was moved on 11 November to Zhalal-Abad police detention center where he was kicked in the chest and further humiliated by being stripped and called derogatory terms. By the time he was finally transferred out of police custody to a prison in Bishkek on 12 November 2010, his health was severely deteriorated.

2.13 Lawyers for the author and his co-defendants appealed to the Supreme Court and were able to file for the first time the witness statements that substantiated the author's version of events and could establish his innocence. This included 14 witness statements to the effect that the author was at home in the morning when the policeman was killed. Although the hearing of the case at the Supreme Court was more or less safe, not dominated by relatives and supporters of the deceased police officer, the author was not allowed to attend it. Despite accepting the applications of the defense and the witness statements, the Supreme Court apparently did not take this evidence into account.

2.14 In its written decision, on 20 December 2011, the Supreme Court did not refer to the new witness statements, summarily dismissed other arguments of the defense as not corresponding to the case file's content, and declined to order any investigation into the torture allegations. It upheld the verdict and sentence against the author and six of his co-defendants (the Court overturned the conviction on one charge against the seventh co-defendant, and reduced her sentence from 20 to 11 years imprisonment).

2.15 In December 2011 and February 2012, a renowned U.S.-based medical specialist, Dr. Sondra Crosby, examined the author in the prison in Bishkek upon the request of the Open Society Justice Initiative and Physicians for Human Rights. In her report, the expert confirmed that the author appeared to have suffered severe and lasting physical injuries as a result of his arrest and incarceration, and his injuries supported his account of torture while in police custody. At the time of her examination, the author needed immediate medical help for persistent visual loss, traumatic brain injury, and spinal injury. In addition, he required immediate evaluation for his chest pain and shortness of breath, symptoms which are strongly suggestive of coronary artery disease and could be life threatening without immediate treatment. None of these tests or treatment has been provided to date.

2.16 The author has exhausted all available domestic remedies. During and after his conviction, his lawyer repeatedly complained of his torture before the Bazar-Korgon District Court, the Appeal Court and the Supreme Court. He also filed several requests with the prosecutor's office to investigate his allegations of torture, and the author furthermore complained of his torture to the Kyrgyz Ombudsman's office.

2.17 Despite these requests, no criminal investigation took place. In denying the requests to investigate, the authorities repeatedly referred to two statements by the author while in police custody that he had no complaints – statements made as a result of threats of further torture. To this day, the prosecutors continue to ignore all evidence provided by the author and his lawyer about the torture he endured, including multiple detailed and consistent accounts of his mistreatment set out in legal documents, statements, details provided to the Kyrgyz Ombudsman, interviews with media and non-governmental organizations, and medical records including the two evaluations by the foreign medical specialist.

The complaint

3.1 The author claims that the treatment inflicted upon him by police officers in detention aimed at obtaining a false confession, for the purpose of discrimination on the grounds of the author's ethnic origin, and as punishment for reporting police abuse, amounts to torture in violation of article 7 of the Covenant. This torture was exacerbated by the conditions in which the author was detained and the failure to provide him with medical treatment, in further violation of article 7 of the Covenant.

3.2 The State party's failure to take measures to protect the author from torture; its failure to conduct an impartial, effective and thorough investigation into the repeated torture of the author and to provide access to effective remedies for the torture suffered, including compensation and rehabilitation, amount to a violation of article 7, read separately and in conjunction with article 2, paragraph 3 of the Covenant.

3.3 The author's detention was not in accordance with domestic law, had no legitimate purpose, and was motivated by his role as a human rights defender and by his ethnicity. It was therefore unlawful and arbitrary in violation of article 9 and prohibited under articles 2 and 26 of the Covenant.

3.4 The conditions in which the author was detained, in particular at the Bazar-Korgon police station were inhumane, in violation of article 10 of the Covenant.

3.5 Furthermore, he was denied adequate time and facilities to prepare for his defense, particularly the ability to communicate with his counsel, and public officials violated the presumption of innocence openly designating him as guilty. The lack of independence and impartiality in the author's trial and subsequent appeal process and the atmosphere of intimidation both at trial and on appeal violated his rights to a fair hearing. He was unable to effectively call or cross-examine witnesses, and was not present at the first potentially meaningful review of his conviction by the Supreme Court, all in violation of article 14 of the Covenant.

3.6 Finally, the author considers that the authorities detained and tortured him and denied him a fair trial, in large part because of his work as a human rights defender in the Kyrgyzstan, in violation of articles 9 and 19 of the Covenant.

State party's observations on admissibility and merits

4.1 In a note verbale of 28 June 2013, the State party submits that based on the complaint submitted to the Committee, it created a special investigative group consisting of five prosecutors, which was tasked with investigating the author's claims.

4.2 The State party further explains that on 12 June 2010, at around 4 p.m., a large group of ethnic Uzbeks gathered at the border of Kyrgyzstan and Uzbekistan. The akim (mayor) of the Bazar-Korgon district arrived, tried to calm the situation and asked the residents to return to their homes. Several people, including Mr. Askarov, called to take the akim as a hostage and cross into Uzbekistan. Later that day, these same people hurled insults at ethnic Kyrgyz people, called for active disobedience, and armed resistance.

4.3 On 13 June 2010, 400-500 persons of Uzbek ethnicity blocked the Bishkek-Osh highway. This group was armed with guns, knives as well as metal and wooden sticks. A group of police officers from the Bazar-Korgon police district were sent to talk to the crowd. The officers were not armed, as their pistols were left at the police station.

4.4 Mr. Askarov and other instigated the angry mob to attack the police officers. As a result, 13 police officers³ were injured, and one officer, M. Suleimanov was killed, and his body was burned. Based on these facts, the prosecutor of the Bazar-Korgon district initiated a criminal investigation. Since several witnesses placed Mr. Askarov as a perpetrator of the crime, on 15 June 2010 he was brought to the prosecutor for questioning as a witness. His house was searched, and the police officers found 10 ammunition cartridges for a “PM” pistol and other items.

4.5 On 16 June 2010, Mr. Askarov was detained as a suspect, in the presence of a lawyer, Mr. Myrzakulov. On 17 June 2010, the author was charged with committing several crimes, specifically under article 233, paragraph 2 and 3, and article 299, paragraph 2, subparagraphs 1 and 3 of the Kyrgyz Criminal Code.⁴ The same day, the Bazar-Korgon District Court ordered⁵ the author’s detention.⁶

4.6 The State party submits that the Bazar-Korgon District Court found the author guilty and sentenced him to life imprisonment.⁷ Seven other co-defendants were sentenced to various terms of imprisonment. The author appealed this decision, which was upheld first by the Zhalal-Abad Regional Court on 10 November 2010.

4.7 On 23 November 2010, the author appealed this decision to the Supreme Court of the Kyrgyz Republic. Except for minor changes that concerned the author’s co-defendants, the decision of the lower court was upheld.

4.8 As it is evident from the court verdict, the author is charged with complicity to kill a law enforcement officer. He did not kill the officer himself, but he directed others to do so. This evidence has been shown through court testimonies of nine police officers.⁸ Numerous other law enforcement officers testified that the author was present at the time and location of the angry mob when the police officer was killed.⁹

4.9 The State party further submits that the author’s claims regarding torture and ill-treatment are not supported by evidence. The investigator, B. Karimov in his testimony on 14 May 2013, reported that he was able to locate the author on 15 or 16 June 2010, and asked him to proceed to the police station. After the author was brought to the police station, this police officer did not participate in the questioning, but reports that “no physical violence was used”.

³ The State party provides all names of the injured police officers.

⁴ Article 233: Organization of mass riots attended by violence, pogroms, arson, the destruction of property, the use of firearms, explosives, or explosive devices, and also armed resistance to government representatives. Article 299: Actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and also propaganda of the exceptionality, superiority, or inferiority of individuals by their attitude to religion, national, or racial belonging,

⁵ From 16 June 2010 to 27 July 2010, the authorities further detained and charged several other defendants. Yet several other suspects were able to avoid arrests and were charged *in absentia*.

⁶ This decision was appealed, but the Zhalal-Abad Regional Court and the Supreme Court upheld the decision.

⁷ The author was found guilty of committing several crimes under the Kyrgyz Criminal Code. His final sentence was calculated by adding several sentences. The most serious charge, punishable by life imprisonment was under articles 30 and 340 of the Criminal Code: Complicity to kill a law enforcement officer.

⁸ Several of these police officers testified that they heard the author hurling insults at ethnic Kyrgyz people.

⁹ The State party submits extensive reports regarding testimonies by various law enforcement officers and other witnesses. All these reports support the author’s conviction. The reports further attempt to show that the investigation into the circumstances of the June events were conducted without any bias for the author’s activity as a human rights defender, or his Uzbek ethnicity.

4.10 Another police officer, A. Oskonbaev, also participated in bringing the author to the police station. He then questioned the author for about 10 minutes, and did not witness any violence. After that, the author was questioned as a witness by the deputy prosecutor Z. Turazhanova.¹⁰ On 16 June 2010, the author was detained in the presence of a lawyer, P. Myrzakulov.

4.11 On 17 June 2010, based on the decision of Z. Turazhanova, the head of the investigation team at the time, the author underwent a medical examination. The results of this examination were issued on 24 June 2010, and it revealed bruises to the author's right cheekbone, both right and left shoulder and in the back. No other injuries were detected. During this examination, the author said that he was hit by someone in his cell, and not by any police officers. On 17 June 2010, during an interrogation, the author stated that he was not mistreated by the police officers; this was officially recorded in the interrogation's minutes.

4.12 On 22 June 2010, the author's lawyer, Mr. N. Toktakunov, filed a complaint with the district prosecutor, where he asked the prosecutor to investigate the fact the author had bruises on his body, and that he was not able to have a confidential meeting with his client. On 23 June 2010, Z. Turazhanova questioned the author again regarding his bruises. Mr. Askarov again stated that he was attacked by an unknown person in his detention cell.

4.13 It was also ascertained that at the time of his initial detention, two other persons were also present in his cell: Mr. M.M. and Mr. SH. M. Mr. M.M, blaming the author for the fact that his house was burned, attacked the author. The author, however, refused to pursue charges against M.M. Moreover, it was impossible to transfer Mr. Askarov to another detention facility in the city of Osh, since the distance between Osh and Bazar-Korgon is 140 kilometres.

4.14 The State party adds¹¹ that the author further complained to the Prosecutor General of the Kyrgyz Republic regarding torture and ill-treatment. After considering the complaint, the prosecutor responded by saying that this request was rejected twice already. This decision was appealed to the Pervomaisk District Court in Bishkek. The court found that the prosecutor's decision was not in line with the requirements of law.

4.15 The complaint was sent to the Zhalal-Abad Regional Prosecutor's Office, where a prosecutor, Mr. Toitonov, again rejected the author's complaint. He found that the author was attacked by M.M. and not by law enforcement officers.

4.16 Furthermore, on 26 October 2010, the author was examined by doctor of the Center for Family Care of the Bazar-Korgon District. She later testified that the author complained about coughing, and stomach pain. She did not witness any bodily injuries.

4.17 On 26 June 2010, the author was also examined by doctor Dzholdoshev, who witnessed bruises on the author's back. These bruises were already examined, and the prosecutor did not initiate a criminal investigation.

4.18 Counsel for the author, Mr. Toktakunov, also claims that on 23 June 2010, he was given only three or five minutes to meet with his client. This is erroneous, since the lawyer was not limited in his ability to speak with Mr. Askarov. On that day in question, the lawyer met with his clients for about 20 minutes in a separate room, and after that, declared that the meeting was over.

¹⁰ This relates to the author's first questioning as a witness on 15 June 2010.

¹¹ The date of this complaint is not provided.

4.19 Mr. Torogulov, who was the head of the Bazar-Korgon detention center, also testified¹² that counsel had unlimited time with his client, and that the author was not subjected to any torture or mistreatment.

4.20 Mr. Toktakunov, the lawyer, also complained that on an unknown date, when he planned to visit the author in the detention center, he was surrounded by several angry relatives of the deceased police officer, Mr. Suleimanov. These people insulted the lawyer, called him a traitor, and threatened to kill him. The State party submits that at that time, the Bazar-Korgon District police did not register any complaints from Mr. Toktakunov regarding these alleged attacks.

4.21 Regarding the initial lawyer who was present at the author's detention, the State party submits that Mr. Myrzakulov defended his client to the best of his abilities. The author's claims that he is a "pocket" lawyer were not confirmed. At some point, Mr. Myrzakulov was visited by several human rights defenders and lawyers, who took his case file for the author. After that, Mr. Myrzakulov stopped representing the author.

4.22 The State party was also able to question several people who were also detained at the time of the author's detention in Bazar-Korgon. None of them witnessed any torture or beatings that the author alleges.

4.23 The State party further denies that the author did not receive proper medical care while he was in the detention center. At least two doctors testified that while the author complained about stomach pains, and some bruises, there was no proof that he was tortured. On 28 June 2010, the prosecutor, Mr. Berdibaev, decided not to initiate a criminal case based on the author's complaints.

4.24 The State party further denies that the author's cell was overcrowded. The author, for example, claims that the size of his cell was 2 meters by 3.5 meters, and at various times, 7 to 12 other detainees were kept in this room. The records of the detention center show that at most, there were 9 detainees in that cell on 28-31 July 2010, on 31 August 2010, and on 1-2 September 2010¹³. The author's complaints about the cell's temperature, water and food supply have not been confirmed – all the detainees received hot meals and hot tea.

4.25 On 24 June 2010, the author was transferred to the Zhalal-Abad Regional Court to consider his complaint regarding conditions of his detention and requesting release pending trial. While the author complains that there, he was also insulted and threatened by the relative of the deceased police officer, there are not confirmations regarding this incident. The author claims that the detention cell at the Zhalal-Abad detention center was intended for 8 persons, but in fact, 16 persons were held there. The records of the detention centre, however, show that only 9 people were detained at that time.

4.26 On 2 September 2010, the author was transferred to the Nookan District Court. This was done to ensure security of defendants, and other participants in the hearing. Because of the security concerns, the author and his co-defendants were provided additional police officers for protection during the transportation. Only later it was revealed that some of the police officers in the convoy were also victims of the events related to the author's charges. This was explained by lack of sufficient number of police officers in the Nookan District police.

¹² All of these testimonies were made in response to questioning by the special investigations' group comprised of five prosecutors that the State party mentions in paragraph 4.1.

¹³ The State party submits that at other time, the number of detainees was lower.

4.27 The State party further contends that the author's claims that he was attacked and insulted in the Nookan District Court were not confirmed. The hearings were conducted under increased security measures. Even if "some participants yelled during the court hearings", this was stopped by the presiding judge immediately.

4.28 Regarding the author's request for additional witnesses, the records of the hearings do not contain any motions by the defendant or his lawyers to call additional witnesses. On 7 September 2010, the lawyer, Mr. Toktakunov, requested the court to question two witnesses, A.A. and I.I. The court denied the request, stating that these witnesses have no connection to the events in question.

4.29 Regarding the torture and mistreatment while the author was in detention in Nookan, the State party submits that these allegations have not been confirmed during the subsequent investigation in 2013. Several police officers who were present at that time in this detention facility were questioned, and they stated that they did not witness any torture or mistreatment.

4.30 The State party also contends that while there were complaints from Mr. Toktakunov regarding the bruise under the author's left eye filed on 6 September 2010, the author himself wrote a letter to the authorities claiming that he "accidentally bumped into the head of a cellmate who was handcuffed", which, allegedly, caused the bruise. The author refused a medical examination.

4.31 On 14 October 2010, the author was transferred to the Suzak District detention centre. His claims about beatings he suffered in the backyard of the detention center have not been confirmed by the testimonies of police officer who were present at the time in question. Regarding the overcrowding of the cell (6 beds and 12 detainees), the State party submits that it was a result of the "June events", and that the author always had a separate bed. The death threats that came from the mother of the deceased police officer could not be verified, since this person died in 2013.

4.32 From 23 October to 4 November 2010, the author was detained in the Tash-Kumyr city detention centre to participate in his appeal hearings. Several police officers were questioned in relation to the author's claims regarding torture, beatings, insult and other forms of mistreatment. All these police officers denied witnessing any form of mistreatment, or participating in torturing the author. Furthermore, a medical examination conducted on 5 November 2010 did not reveal any injuries to the author.

4.33 On 10 November 2010, the author and his co-defendants were brought to the Zhalal-Abad city detention center. The State party denies the claims that the chief of the detention center, Mr. Y. Kerimkulov, ordered to beat up the author.

4.34 On 12 November 2010, the author was taken from Tash-Kumyr detention facility to Bishkek. En route, he was detained in Toktogul settlement-colony No. 52. There, despite the author's allegations, he was provided with all the necessary items to spend a night, such as a mattress and a blanket.

4.35 Regarding the author's participation in the appeal hearings of the Supreme Court, the State party submits that on 26 January 2011, the author's counsel requested that the author himself is allowed to participate in the hearings. According to articles 374 and 378 of the Criminal Procedure Code of the Kyrgyz Republic, the participation of the convicted person in appeal hearings¹⁴ is in the discretion of the court. In this case, the court decided to hear the author's case without the author being present.

¹⁴ It is not clear whether the State party refers to the cassation appeal, or to the supervisory proceedings.

4.36 The State party further submits that the author's claim regarding inadequate access to medical facilities have been discredited by several doctors and other witnesses. On 13 November 2010, the author was admitted to the Central Hospital of the penitentiary system. The initial examination of the author showed that his condition was "relatively satisfactory". The author complained about his health and was treated and released on 25 November 2010.

4.37 The State party concludes that generally, in regards to all claims made by the author, only Mr. Askarov himself was witness to beatings and torture, otherwise, these claims have not been confirmed. The author is interested in these claims personally to relieve him of criminal responsibility. Three psychiatrists after examining the author have concluded that the author has a mental status of "a liar, an obsequious person". The author "uses this lies to mislead international organizations". The author further claims that the criminal prosecution has been a revenge of the law enforcement agencies for his alleged role in the killing of the police officer.

4.38 The fact that the author tells lies is confirmed by testimonies of more than 100 witnesses, among them many law enforcement officers, members of the judiciary, employees of the penitentiary systems, doctors and so on. It has been shown that the author has received a proper medical care when it was necessary.

Author's comments on the State party's observations

5.1 Commenting on the State party's observations, the author submits that the State party's submission failed to address his claims. The State party focuses on interviewing police officers, prosecution and court official, without even questioning Mr. Askarov and his representatives. Unsurprisingly, the conclusion of the report is that the author's allegations have not been confirmed.

5.2 At the same time, the State party attempts to impugn the author by attacking and discrediting his work as a human rights defender, denying that the alleged violations ever occurred and calling the author "a liar".

5.3 The State party does not address the author's claims but instead challenges the witness statements which were included in the communication. The State party also ignores the medical evidence produced by independent expert, and instead, relies only on state sponsored medical examination, which in its turn was rejected by independent medical experts as "incompetent" or "misleading".

5.4 The State party's response takes at face value testimonies and statements made by government officials involved in Mr. Askarov's torture, while dismissing the author's account as untrue. The author has provided a compelling and consistent account of his ill-treatment. For example, in late June 2010, Mr. Askarov gave three visiting employees of the Office of the Ombudsman a written statement regarding the beatings that he suffered, and he spoke to the Ombudsman by phone. The State party disregards this pattern of consistency, and moreover, never interviewed the Ombudsman as part of its investigation.

5.5 The State party fails to consider that the statements made by Mr. Askarov to the authorities that he was not tortured were made under extreme duress. These statements were made in response to further threats of torture, and threats of abuse against others. The communication described at least four separate incidents where the author showed visible signs of "extensive physical injuries" in the presence of officials, which had an obligation to investigate and determine their origin.

5.6 On 16 June 2010, the State party issued a press release stating the author had no injuries. However, the next day, Mr. Askarov had visible bruises on the face and back. On 22 June 2010, Mr. Toktakunov took photographs of Mr. Askarov's heavily bruised back,

and showed these photographs to the prosecutor in charge of the case. Shortly after the first day of trial of Mr. Askarov on 2 September 2010, he was visited by A. Abdirasulova, head of the human rights organization Kylym Shamy, and by deputy Minister of Interior, Mr. Alymbekov. Mr. Abdirasulova could see bruises on the author's face. On 6 September 2010, the author appeared in court with visible bruise under his left eye.

5.7 The author reiterates that he was arbitrarily detained, without registration, for almost 24 hours on 15 June 2010. The State party claims that the author was initially questioned as a witness but in fact he was detained as a suspect. He was formally arrested on 16 June 2010 in the presence of the appointed lawyer.

5.8 The communication also describes numerous conditions that led to a flagrantly unfair trial, including ongoing torture of the author, intimidation, threats, and violence against the defence lawyers, defence witnesses and the court's failure to secure a courtroom. The State party chooses to ignore evidence of witness intimidation and instead, relies on statements from the court officials who allowed this to happen.

5.9 The State party further fails to provide a plausible response to an important corroborating testimony from the author's brother, who was detained with him on the night of 15 June 2010. Both were detained without any charges and were repeatedly beaten.

5.10 The author has provided extensive reports from the civil society and independent trial monitors who suggested ill-treatment during trial. The International Commission of Jurists provides a detailed description of the arrest, detention and torture, and describes the degree of courtroom harassment and intimidation of defence lawyers and defence witnesses. The State party instead relies on statements from prosecutors and judges.

5.11 The State party further ignored affidavits submitted by Dr. Sandra Crosby, which show clear and compelling evidence that the author suffered severe and lasting injuries as a result of his arrest and incarceration. The expert finds that the symptoms suffered by the author to be "highly consistent" with a traumatic brain injury, and that the author's description of blunt force trauma to the chest is consistent with the X-rays that revealed fractured ribs.

5.12 The State party confirms the overcrowding in Zhalal-Abad's detention center. The State party also confirms that the author was detained at the temporary detention center at the Bazar-Korgon police station, in violation of the domestic law. While denying any violence in the courtroom, threats and attacks against the defendants, lawyers and witnesses, the State party confirms that the hearings were moved to Nooken to ensure security of the defendants and other participants in the trial. One of the convoys for the defendants included police officers from Bazar-Korgon district who were recognized as victims themselves.

5.13 The new investigation by the State party, responding to the author's claims to the Committee, did not seek to interview any of the witnesses for defence. The only person that was nominally associated with the author was the lawyer, Mr. Myrzakulov. The investigators failed to interview the two lawyers that actually represented Mr. Askarov during the trial, Mr. Toktakunov and Mr. Abylakimov.

5.14 The author further contends that since the State party's investigation failed, there is a need for independent commission of inquiry to remedy the violations of the Covenant. The

Istanbul Principles call for an “independent commission of inquiry or similar procedure”.¹⁵ The composition of the commission must ensure independence of members.

5.15 The author further requests urgent consideration of his case by the Committee. His health as well as his life is at great risk, as he suffers from coronary artery disease, and other serious conditions. During his detention, he suffered repeated beatings, which resulted in array of brain, visual, and hearing injuries. The author also suffers from poor psychological condition. Despite these continuing health issues, the State party refuses to provide critical medication, tests or treatment. The prison doctors have not even provided necessary tests to determine the appropriate treatment.

Further submission by the State party

6.1 On 11 June 2014, the State party submits that the investigation in the author’s claim was impartial and complete. More than 100 witnesses, who were questioned in the process, confirmed that the author’s claims regarding beatings, torture and other mistreatment were “unfounded”.

6.2 The State party submits that the author was indeed questioned on 15 June 2010, from 16:45 until 19:15. On 16 June 2010, at 9:00 in the morning, he was officially arrested as a suspect. The investigation could not ascertain the author’s whereabouts after his initial questioning on 15 June 2010 until his arrest on 16 June 2010. The Bazar-Korgon District Court’s decision regarding the author’s detention was issued on 17 June 2010, at 18:30. So even considering that the author’s claims are true, the detention was formalized within 48 hours.

6.3 The trial of the author at all three instances was carried out in strict compliance with the requirements of the criminal procedure of the Kyrgyz Republic. All defendants, including the author, were assisted by qualified defence lawyers. The author was defended by two lawyers, Mr. Toktakunov and Mr. Abylakimov. These lawyers had equal rights with the prosecution, including their right to call additional witnesses. As it is evident from the investigation records and the trial transcripts, these lawyers did not request to call additional witnesses.

6.4 One of the lawyers, Mr. Toktakunov, made an oral request on 7 September 2010, asking the court to request the presence of two witnesses, A.A. and I.I. However, as it was explained to the lawyer, it is up to the defence side to secure presence of additional witnesses – the lawyers request was therefore denied.¹⁶

6.5 The author seems to challenge the veracity of the statements made by prosecutors or court officials. The prosecutor’s office is independent of the police force. The court, according to the law, is only body that admits evidence, and makes impartial decisions based on such evidence. On the other hand, the evidence presented by lawyers to the Committee was never presented during the investigation or the trial. Since these witnesses were either relatives or neighbours of Mr. Askarov, the “veracity of their statements raises doubt”.

6.6 For example, the statement by the author’s brother that he was detained together with the author, was beaten up and tortured, were not confirmed when examined by a prosecutor of the Zhalal-Abad prosecutor’s office. The records of the detention center show that the author’s brother was not present in the detention center. The head of the detention

¹⁵ The author refers to the “Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment”, also known as the “Istanbul Protocol”.

¹⁶ The investigations group questioned one of the witnesses, Mr. I.I., in 2013. This witness stated that he was not familiar with the author.

center at that time, Mr. K.T confirmed that the author's brother was not detained at the time in question.

6.7 The author seems to discredit the findings of doctors at the Central Hospital of the penitentiary system, and trust only the conclusions of Dr. Crosby. Upon registration at the hospital, the author was thoroughly examined. The X-ray that was conducted on 19 November 2010, showed broken ribs, but the date of the injury could not be determined. On 17 November 2011, the author underwent echo- and electrocardiograms, and was consulted by a cardiologist. These tests identified no "pathological changes".

6.8 Regarding the headaches experienced by the author, the doctors conducted an echoencephalography examination, and did not find any issues. The same is true for a visual tests conducted on 31 October 2011 and 14 October 2012. Therefore, the author's conditions were examined by several doctors but "no pathological changes" were identified.

6.9 The State party reiterates its position that it has provided all the necessary security measures for the court hearings. The victims and relatives of the deceased police officer were warned about order in the courtroom. The State party further confirms that it has collected a vast body of evidence that proves the author's guilt, including the statements by nine police officers who witnessed the author's calls to kill the officer. Additional law enforcement officers – eight in total - testified that they saw the author at the scene of the killing of the police officer.

6.10 The State party further denies that the author was tortured or beaten while in detention. This is confirmed not only by police officers, but also by his relatives and human rights defenders who visited the author. Furthermore, while in detention, the author did not request any medical assistance. Regarding a bruise under his left eye, the author himself submitted a letter to the judge on 2 September 2010 that he accidentally bumped into a cellmate's head.

6.11 Additional claims by Ms. Abdirasulova, that she saw signs of torture on the author, also raise doubts. Ms. Abdirasulova did not file any complaints at that time, and only submitted her report with the present communication to the Committee. The State party argues that it did in fact question the author: on 10 July 2013 and 18 July 2013, with the participation of the author's lawyer, Mr. Vakhitov.

6.12 The State party submits that on 5 February 2014, the Deputy Prosecutor General of the Kyrgyz Republic decided to terminate the investigation based on the newly discovered evidence. This decision was appealed by Mr. Vakhitov to the Oktyabrsk District Court in Bishkek. In his appeal, the lawyer asked the court to order the Prosecutor General to continue the investigation. The State party therefore concludes that the author has not yet exhausted all available domestic remedies.

6.13 The State party further reiterates its position that the author and his lawyers were provided all the necessary facilities in preparation for the trial, and that the court and police officers provided necessary security measures. Furthermore, upon the author's conviction, he was provided with all the necessary medical assistance and treatment.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

7.3 The Committee notes that the State party claims that the author failed to exhaust all available domestic remedies, since, at the time of the State party's most recent submission, the author's appeal to the Oktyabrsk District Court was still pending. The Committee notes, however, that this latest appeal concerns the refusal by the Office of the Prosecutor General to continue the investigation based on newly discovered evidence or circumstances. It doesn't concern the claims of the author regarding alleged violations by the State party of the author's rights under several articles of the Covenant. Regarding these claims under the Covenant, the Committee notes that the author successfully exhausted all available domestic remedies, including his supervisory appeal that was filed to the Kyrgyz Supreme Court on 22 November.¹⁷ On 20 December 2011, the Supreme Court upheld the verdict handed to the author by the lower courts. Accordingly, the Committee concludes that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering the communication.

7.4 Regarding the author's claims under article 14, paragraphs 1, 2 and 5 of the Covenant, the Committee notes that the author has failed to provide any elements to demonstrate that the State party violated his right to a fair trial, presumption of innocence and appeal rights. In the absence of additional pertinent information on file, the Committee concludes that the author's claims under article 14, paragraphs 1, 2, and 5 of the Covenant have not been sufficiently substantiated. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 As to the alleged violation of the author's rights under articles 2, 19 and 26, of the Covenant, the Committee considers that the author has failed to provide sufficient information and factual support, and therefore, has failed to substantiate his claims that he was persecuted based on his activities as a human rights defender, or based on his Uzbek ethnicity. In the circumstances, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility and declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.6 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 7, read separately and in conjunction with article 2, paragraph 3, article 9, paragraph 1, article 10, paragraph 1, and article 14, paragraphs 3 (b) and (e), of the Covenant and therefore proceeds with its consideration of the merits.

Consideration of the merits

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

8.2 The Committee first takes into consideration the author's allegations that he was, on a number of occasions, tortured and otherwise mistreated. The Committee notes that the findings of the medical forensic examinations conducted by independent experts are consistent with other evidence suggesting that the author was subjected to acts of torture. The Committee notes the State party response in that it, on most occasions, simply states that these allegations "have not been confirmed", despite questioning more than 100 witnesses (most of them were police officers, court officials or prosecutors). The

¹⁷ On 27 January 2011, the author filed an addendum to this appeal through his lawyer, Mr. Toktakunov.

Committee notes that the author was held at the same police station in Bazar-Korgon, where the deceased police officer used to work which increased the risk of ill-treatment and that no specific security measures were taken to safeguard the author. The Committee considers that in the circumstances of the present case, and in particular in light of the State party's inability to explain the visible signs that were witnessed on the author on a number of occasions, due weight should be given to the author's allegations.

8.3 Regarding the State party's obligation to properly investigate the author's torture claims, the Committee recalls its constant 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.¹⁸ The Committee notes that the material on file does not allow to conclude that the investigation into the allegations of torture was carried out promptly or effectively or that any suspects were identified, despite a number of incriminatory witness accounts.¹⁹ In the present case, the inquiry that was conducted in 2013, while extensive, lacked the element of impartiality,²⁰ as it interviewed more than 100 law enforcement officers, judge, court clerks and prosecutors, but failed to interview the author's lawyers, human rights defenders who visited the author in detention and his relatives. The Committee notes the State party's submission that it interviewed the author without referring to the results of these interviews, nor providing a copy of the record. In the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of the rights of Mr. Askarov under article 7 of the Covenant, read separately, and in conjunction with article 2 (3), of the Covenant.

8.4 The Committee further notes the author's claims under article 9, paragraph 1, in that he was arbitrarily detained from 15 June 2010 to 16 June 2010. The author further claims that this was done to enable the police officers to torture him. The State party contends that the author was only questioned as a witness, and formally arrested only on 16 June 2010. The Committee recalls its general comment No. 35, that the "arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law".²¹ Beyond 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, the State party denies altogether that it was holding the author during the night in question, despite numerous witness accounts to the contrary, and the inability of the family members to locate the author. In the absence of any pertinent explanation from the State party regarding the author's whereabouts, the conditions of his detention, and the record of arrest, the Committee considers that the author's rights under article 9, paragraph 1, of the Covenant were violated.

8.5 The Committee further takes note of the author's contention that the conditions of his detention, particularly at the Bazar-Korgon police station, were inhumane, in violation of article 10 of the Covenant. The author also complains of the conditions of detention following his conviction, including of the lack of adequate access to medical care. The Committee notes that the State party is under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick

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

¹⁹ The Committee also notes that in order to explain the author's allegations of ill-treatment, the State party refers to three psychiatrists' conclusion that the author has a mental status of "a liar, an obsequious person".

²⁰ The Istanbul Protocol also calls for "investigations through an independent commission of inquiry or similar procedure". See the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, para 74.

²¹ General comment No. 35 (2014) on liberty and security of person, para. 13.

prisoners, in accordance with the rule 24 of the Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules).²² It is clear from the author's account, and from multiple submissions by independent experts contained on file, that he was not able to receive proper medical treatment for the serious conditions that he is suffering. Considering the fact the State party itself admitted the overcrowding, and taking into account the author's detailed description of his health conditions and lack of access to adequate medical care, the Committee concludes that the State party violated the author's rights under article 10, paragraph 1 of the Covenant.

8.6 The Committee notes the author's allegations that the trial was characterized by a number of irregularities, such as disorder and violence caused by the public attending the trial. The author further claims that he was not able to call witnesses on his behalf, was not able to cross-examine prosecution witnesses on the first day of trial when his counsel was absent, and could not question any witnesses at the Supreme Court hearings. In this connection, the Committee recalls its long-standing jurisprudence that the guarantee to be able to call and question witnesses "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".²³ The Committee takes note of the State party's contention that the said "witnesses have no connection to the events in question" or that that records of the court hearings contains no mentioning of counsel's request to call any additional witnesses. The Committee, however, notes that it remains undisputed that the author's counsel was not able to question witnesses on the first day of trial on 2 September 2010, and that the author was not able to call or cross-examine witnesses at the Supreme Court hearing. In these circumstances and based on the material before it, the Committee concludes that the State party violated the author's rights under article 14, paragraph 3 (e) of the Covenant.

8.7 The Committee, lastly, looks at the author's claim that his rights to have adequate time and facilities for the preparation of his defence were violated. The Committee notes the author's claims that the police and prosecutor refused to allow him to meet with his lawyer in private and withheld information necessary to prepare for his defence. Furthermore, the author claims that on several occasions, relatives of the deceased police officer physically attacked his lawyer on the premises of the police station and the prosecutor's office while the police and local prosecutors failed to intervene, creating a general sense of fear, incompatible with the proper execution of the defence lawyer's functions. There is also unrefuted evidence that on the first day of trial, on 2 September 2010, the author's lawyer was not present at the hearings due to his late notification, whilst the court heard 16 prosecution witnesses. In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 14, paragraph 3 (b) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 7, read separately and in conjunction with article 2, paragraph 3; article 9, paragraph 1; article 10, paragraph 1; and article 14, paragraph 3 (b) and (e), of the Covenant.

²² See the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, revised by the United Nations General Assembly (A/Res/70/175) on 17 December 2015.

²³ See general comment No. 32, on the right to equality before courts and tribunals and to a fair trial, paragraph 39.

10. 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 take appropriate steps to: (a) immediately release the author; (b) quash the author's conviction and, if necessary, conduct a new trial, subject to the principles of fair hearings, presumption of innocence and other procedural safeguards; and (c) provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish those Views.
