

Submission to the Human Rights Committee prior to adoption of list of issues on Kyrgyzstan

MAY 2013

The Open Society Justice Initiative presents this submission to the Human Rights Committee for its adoption of a list of issues in advance of its examination of Kyrgyzstan's periodic report. This submission focuses on Kyrgyzstan's persistent failure to implement the Committee's views on individual communications and the widespread practices of torture and ill-treatment and the Government's lack of effective investigations into such allegations.

Executive summary

The Open Society Justice Initiative (Justice Initiative) presents this submission to the Human Rights Committee for its adoption of a list of issues prior to its examination of Kyrgyzstan's periodic report on its implementation of the International Covenant on Civil and Political Rights.

The Justice Initiative promotes the rule of law through litigation, legal advocacy, and reform of legal institutions aimed at enhancing the protection of human rights. In November 2012, the Justice Initiative, together with prominent human rights defender Mr. Azimjan Askarov's lawyer, filed a communication to the Committee arguing that Mr. Askarov's rights under Articles 2, paragraph 3, and Articles 7, 9, 10, 14, 19 and 26 of the Covenant were violated. The case is pending consideration by the Committee.¹

This submission focuses on Kyrgyzstan's repeated failure to implement the Committee's views on almost all of the individual communications it has considered. Widespread practices of torture and ill-treatment and the Government's lack of effective investigation and prosecution of such cases are in violation of Articles 7 and 2, paragraph 3. The case of Mr. Askarov, who was subjected to ill-treatment and has been sentenced to life in prison following an unfair trial in violation of Article 14 of the Covenant, exemplifies the widespread violations of the Covenant.

We encourage the Committee to ask Kyrgyzstan the following questions:

In relation to implementation of the Committee's views:

- What steps has the Government taken to implement the UN Human Rights Committee's views and comply with the Constitutional provision in Article 41, paragraph 2?
- Under the current domestic law, can the Committee's views serve as grounds for reopening a case? If not, what steps is the Government taking to allow for reopening of a criminal case based on a decision of the Committee?
- Are national courts able under domestic law to directly apply human rights treaties, including the Covenant, when deciding cases before them? Do the courts refer to the Covenant in their decisions? Please give examples of the Covenant's use by Kyrgyz courts.

In relation to investigations of allegations of torture and ill-treatment:

- What measures has the Kyrgyz Republic taken to ensure that all allegations of torture and other ill-treatment in detention are independently and effectively investigated? In particular, who is responsible for gathering initial evidence in case of a complaint of abuse in detention? What criteria are applied when assigning an investigator to such a case?
- Please provide detailed information on: (a) the investigations and number of complaints received by the prosecutor against law enforcement and detention personnel related to incidences of torture and ill-treatment; (b) the types of charges brought; (c) the number of cases dismissed and the reasons for their dismissal; (d) the number of officials disciplined and the sanctions imposed; and (e) concrete measures taken for the rehabilitation and compensation of victims.

*In relation to the case of Mr. Askarov:*²

- What steps have been taken to investigate Mr. Askarov's allegations that he was tortured while in detention and to hold those responsible to account?
- What steps have been taken to ensure the fair consideration of the case? What steps did the State take to consider newly discovered circumstances filed with the general prosecutor's office in 2012 and to consider testimonies of defense witnesses who were unable to speak during the court proceedings due to threats, intimidation and violence in the courtroom?

I. Consistent failure to implement the Committee's views

To date, the Committee has adopted views on 14 communications against Kyrgyzstan, consistently finding violations of its obligations under the International Covenant on Civil and Political Rights. The Committee further found that the Government failed to implement its recommendations in all but one of these 14 cases. Of the remaining 13 cases, the Committee continues "ongoing" dialogue with the government in five cases, albeit with no signs of progress; and its recommendations have not been satisfactorily implemented in the other eight cases.³

The pervasive lack of implementation not only constitutes a failure by the Government to comply with its obligations under Article 2, paragraph 3(a) of the Covenant to ensure an effective remedy to anyone that has suffered a violation of his or her Covenant rights. It also violates Article 41, paragraph 2 of the Constitution of the Kyrgyz Republic, which states that "in case international treaty bodies find that Kyrgyz Republic violated human rights and freedoms, the state shall take measures for restoration of the rights and compensation of damages."

The Justice Initiative has filed two requests with the Government to implement the Committee's decision in the case of *Moidunov v. Kyrgyzstan*,⁴ and asked it to pay compensation to the victim's family. The State has thus far refused to pay.

Under current law, in the absence of new circumstances or new evidence, a criminal case may not be reopened. Civil society organizations have urged the State to revise the Criminal Procedure Code to provide that the Committee's views constitute "new circumstances" and a ground for reopening a criminal case. Such an amendment would be in line with the Kyrgyz Constitution and would facilitate compliance with the Government's obligation to provide an effective remedy. However, to date, the Criminal Procedure Code has not been amended to include such a provision, and the Committee's decisions remain unimplemented.

II. Failure to investigate and prosecute widespread allegations of torture and ill-treatment

Kyrgyzstan's failure to implement adequate safeguards against torture and other ill-treatment violates Articles 2(2) and 7 of the Covenant.

In its previous concluding observations on Kyrgyzstan from 2000, the Committee was gravely concerned about torture and other inhuman and degrading treatment. It called for reform of the Criminal Code to ensure that acts of torture are an offence and that all allegations are investigated by independent bodies and those responsible prosecuted. It also recommended that provision be made for medical examination of detained persons and for independent monitoring of all places of detention.⁵

In 2012, Article 305-1 of the Criminal Code was amended such that the law's definition of torture was brought in line with the definition set out in the UN Convention Against Torture, and torture became a grave crime. However, to date, no one has been convicted under this provision.

This year, the Justice Initiative carried out an analysis of obstacles to effective investigation of complaints of torture in Kyrgyzstan, which remains widespread in the country. The analysis identified important barriers at the pre-investigation stage, where forensic medical check-ups are ordered too late, police testimonies are given greater value than those of complainants, and investigators believe that alleged criminals use unfounded complaints of torture as a defense. As a result, complaints are often dismissed before a criminal case is even opened. Furthermore, investigations are not properly carried out due to a lack of independence (police themselves are responsible for evidence gathering) or specialised investigative skills. The Justice Initiative also found that investigators, under pressure to meet quotas, use torture to elicit confessions, and rules providing for the exclusion of such tainted confessions in court are not applied. Prolonged judicial proceedings and the absence of procedures for reversing the burden of proof when torture is alleged further undermine effective prosecution of these crimes.⁶

During his mission to Kyrgyzstan in December 2011, the UN Special Rapporteur on Torture noted "numerous accounts and eyewitness testimonies suggesting that torture and ill-treatment had been historically pervasive in the law enforcement sector."⁷ He also identified patterns of torture by police officers after arrest and during the first hours of informal interrogation, including asphyxiation with plastic bags, punches and beatings with truncheons, and threatened rape. Police stations and temporary detention facilities were among the most often cited locations where the ill-treatment occurred.⁸

A. Failure to prevent torture or provide safeguards

Following his visit to Kyrgyzstan in December 2011, the UN Special Rapporteur on Torture highlighted the lack of safeguards against torture in Kyrgyzstan, including "non-compliance with regulations requiring the prompt registration of persons arrested, failure to notify family members immediately following an arrest, delayed independent medical examinations and the complicity

of State appointed lawyers with investigators who offer a purely token presence and who are seen as being formally present to rubberstamp the decisions of the investigator.”⁹ A particular problem was “[t]he irregular – but almost routine – procedure of unregistered arrest [which] makes it impossible to establish whether the three-hour maximum term for the first stage of deprivation of liberty is observed,” as a result of which torture has generally taken place by the time the detainee first saw even the duty lawyer.¹⁰

The channels available for detainees to complain of torture “are marred by allegations of lack of independence and ineffectiveness,” and the Special Rapporteur “believe[s] that most detainees refrain from filing complaints with prosecutors or inquiry officers during their monitoring visits out of fear of reprisals.”¹¹ The requirements for regular medical examinations of detainees are not implemented in practice,¹² and the doctors responsible for documenting torture generally lack independence from the authorities in whose custody the alleged ill-treatment took place.¹³

This Committee has underlined the importance of adequate safeguards against torture, affirming that “to guarantee the effective protection of detained persons,” States need to ensure the realization of specific safeguards.¹⁴ These safeguards include the right to have detention registered and notified to a third party; the right to access a lawyer; and the provision of an independent medical examination.¹⁵ The Committee has specified that “[t]he protection of the detainee ... requires that prompt and regular access be given to doctors.”¹⁶ Such safeguards are clearly absent in Kyrgyzstan.

B. Failure to investigate torture

The state’s failure to conduct impartial, effective and thorough investigations into all allegations of ill-treatment or torture constitutes violations of Article 7 of the Covenant in conjunction with Article 2(3). The Committee has stated that Article 2(3) obliges State parties to “ensure that individuals ... have accessible and effective remedies to vindicate [ICCPR] rights”, and has emphasised 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 [ICCPR].”¹⁷ It has underlined that complaints of torture “must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”¹⁸

Kyrgyz authorities consistently fail to investigate allegations of torture. Since the Committee’s last concluding observations, no steps have been taken to ensure that complaints are investigated by independent bodies. According to information provided by the Prosecutor General’s Office, there have been no convictions for torture and very few prosecutions since Article 305-1 (torture) was introduced into the Criminal Code in 2003.¹⁹

Commencing in April 2010 with President Bakiev’s ouster, followed by further mayhem in the south in June 2010 and its aftermath, reports consistently highlighted the frequency and gravity of arbitrary detention, torture, and ill-treatment by law enforcement bodies.”²⁰

In 2010, Kyrgyzstan experienced its worst violence since gaining independence in 1991.²¹ Between 10 and 14 June 2010, violence between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan killed hundreds, injured thousands, destroyed more than 2,600 homes and caused the

temporary mass exodus to Uzbekistan of nearly 100,000 ethnic Uzbeks from Kyrgyzstan's southern provinces.²² A further 300,000 were internally displaced.²³

The Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan (KIC), which was commissioned by then Kyrgyz President Roza Otunbayeva in 2010, reported that “[t]he evidence presented ... shows that the ill treatment of detainees by authorities in the first place of detention, irrespective of the precise location, has been almost universal.”²⁴ The KIC has confirmed that the main methods of ill-treatment during this period included prolonged, severe beatings including with the handles of firearms; punching and kicking; and placing a plastic bag over the head of the detainee.²⁵ The UN High Commissioner for Human Rights received 68 complaints of torture in the context of investigations of the June 2010 violence, and stated that “[t]his is believed to be only a fraction of the real total.”²⁶

Moreover, the European Court of Human Rights recently examined the risk of torture facing ethnic Uzbek suspects in southern Kyrgyzstan. It recounted in detail the reports of abuse and discriminatory prosecutions targeted at the ethnic Uzbek population following the violence of June 2010.²⁷ Based on this, the Court found that: “It follows from the evidence before the Court that the situation in the south of the country is characterised by torture and other ill-treatment of ethnic Uzbeks by law-enforcement officers, which increased in the aftermath of the June 2010 events and has remained widespread and rampant, being aggravated by the impunity of law-enforcement officers. Despite the acknowledgment of the problem and measures taken by the country central authority, in particular the Prosecutor General, their efforts have so far been insufficient to change the situation”²⁸ Based on the “attested widespread and routine use of torture and other ill-treatment by law-enforcement bodies in the southern part of Kyrgyzstan in respect of members of the Uzbek community,” the Court held that the extradition of an ethnic Uzbek suspect to Kyrgyzstan where he would be detained and prosecuted in Jalal-Abad province would violate Article 3 of the European Convention (the prohibition of torture).²⁹

The failure to take meaningful steps to investigate police torture was also a feature of the aftermath of the June 2010 violence.³⁰ According to the UN Special Rapporteur on Torture, the Kyrgyz authorities routinely flouted their responsibilities to address torture: “Despite numerous complaints and, in some cases, overwhelming evidence, Kyrgyz authorities have failed to meet their international obligation to promptly and thoroughly investigate and prosecute incidents of torture connected to the June violence.”³¹ The Special Rapporteur on Torture expressed his concern with regard to the “serious lack of sufficiently speedy, thorough and impartial investigations into allegations of torture and ill-treatment, as well as a lack of prosecution of alleged law enforcement officials.”³² Courts often ignored statements of defendants that their confessions were obtained through ill-treatment or torture, even where they showed visible signs of ill-treatment,³³ or courts have actively silenced defendants who attempted to complain of their abuse.³⁴

During the Universal Periodic Review (UPR) process by the Human Rights Council in 2010, Kyrgyzstan received and accepted recommendations to “[s]trengthen its safeguards against torture,”³⁵ to “ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture”,³⁶ and to “[e]stablish constitutional reforms that will guarantee the separation of powers, the rule of law, the independence of the judiciary.”³⁷

C. Lack of judicial independence in addressing torture

In September 2005, the UN Special Rapporteur on the Independence of Judges visited Kyrgyzstan. He expressed concern “about a general failure to ensure prompt, impartial and full investigations into allegations of torture;”³⁸ concluded that “the various limitations on the independence of the judiciary ... mean that judges regularly conduct proceedings in favour of the prosecution;”³⁹ and confirmed that the prosecutor’s offices “play an extremely dominant role in the administration of justice” and “exercise supervisory powers and exert disproportionate influence over the pre-trial and trial stages of judicial proceedings.”⁴⁰

The prosecutor’s office is mandated under the law to investigate allegations of torture and ill-treatment. However, conflicts of interest are hampering independent and effective investigation procedures. The prosecutor’s office generally requests the employees of local police stations to collect evidence. Frequently, such requests lead to investigations undertaken by personnel in the same police station where the torture or ill-treatment allegedly took place.

III. The emblematic case of Mr. Askarov

In November 2012, the Justice Initiative, together with Mr. Askarov’s lawyer, Mr. Nurbek Toktakunov, filed a communication to the UN Human Rights Committee, arguing that the treatment suffered by Mr. Askarov violated multiple Covenant provisions including, Article 2, paragraph 3, and Articles 7, 9, 10, 14, 19 and 26.

In its previous concluding observations, the Committee expressed concern about intimidation and harassment of human rights defenders and journalists who had been subjected to prosecution, fines, and imprisonment.⁴¹ The Committee called on the government to protect human rights defenders and journalists from harassment, and to release, rehabilitate and compensate those that had been imprisoned in contravention of Articles 9 and 19 of the Covenant.

Mr. Askarov’s case exemplifies the widespread torture and discrimination of people of Uzbek ethnic origin following the ethnic violence in the country in 2010, as well as the lack of accountability for the perpetrators of the abuse. Mr. Askarov, a prominent human rights defender and ethnic Uzbek, was detained in the aftermath of ethnic violence that shook southern Kyrgyzstan in June 2010. While in police custody, he was repeatedly and severely beaten and interrogated due to his ethnicity and human rights work. For five days, he was denied access to a lawyer, and subsequently, his lawyer was attacked twice when he attempted to visit. Mr. Askarov was sentenced to life imprisonment after a sham trial in 2010. He remains in prison today.

Mr. Askarov and his lawyer complained to the prosecutor’s office that he had been subjected to torture. However, a criminal case was not opened, his allegations were not investigated, and no one has been held to account for the ill-treatment he suffered.

Mr. Askarov was arrested while he was documenting the death toll and property destruction suffered primarily by the Uzbek community after the ethnic clashes in June 2010. He was denied adequate time and facilities for the preparation of his defence; the right to communicate with counsel; and the presumption of innocence, as public officials (including the judge and

prosecutor) made statements portraying him as guilty before a fair trial was concluded. Mr. Askarov and his counsel were unable to present their case or have it considered on equal terms with the prosecution; for example, defense witnesses were not questioned. His conviction was based solely on the testimony of police officers working in the police station that had been the subject of complaints authored by Mr. Askarov. In short, he was denied a fair hearing by an independent and impartial tribunal throughout the trial and appeal process in violation of Article 14.

At present, a significant number of defense witnesses have come forward and are prepared to give their testimony. However, the General Prosecutor referred the case back to the Jalalabat prosecutor's office, which originally prosecuted Mr. Askarov in 2010. This office has refused to consider the unheard testimony as newly discovered circumstances such that the case could legally be reopened. Consequently, the unfair conviction, based on a fundamentally flawed trial, stands, and Mr. Askarov languishes in prison.

Annex

Communication	Committee's decision	Follow-up status	Dates
<p>Communication No. 1547/2007, Gunan</p>	<p>7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts before it disclose a violation of the author's right under article 9, paragraph 3, of the Covenant.</p> <p>8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, in the form of appropriate compensation. The State party is also under an obligation to take all necessary steps to prevent similar violations occurring in the future.</p>	<p>The State party presented its observations by note verbale of 29 December 2011. It recalls the facts of the case extensively. It recalls that in 1999, Mr. Gunan was charged for serious crimes, including murder; terrorism in an organized group; participation in a criminal association; and, inter alia, the unlawful acquisition, possession and transmittal of firearms, ammunition, explosives and explosive devices. On 12 March 2001, the Osh City Court sentenced Mr. Gunan to death. This decision was confirmed on appeal, on 18 May 2001, by the Osh Regional Court, and by the Supreme Court on 18 September 2001. The author's allegations regarding the use of psychological and physical pressure by the investigators were examined by the courts and were not confirmed. According to the State party, these allegations constituted a defence strategy and an attempt to avoid the</p>	<p>Views adopted on 27 October 2011</p> <p>Follow-up: A/67/40 (Vol. I)</p>

		<p>imputation of criminal liability concerning particularly serious crimes. The State party considers that the author's allegations in the communication to the Committee did not correspond to reality. It adds that it was not possible to submit more comprehensive information, as terrorism-related data constitute a State secret and cannot be revealed. The State party's submission was sent to the author, for comments, in February 2012.</p> <p>The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.</p>	
<p>Communication No. 1756/2008, Moidunov and Zhumbaeva</p>	<p>9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kyrgyzstan of the author's son's rights under article 6, paragraph 1, and article 7, and of the author's rights under article 2, paragraph 3 read in conjunction with articles 6, paragraph 1 and 7, of the Covenant.</p> <p>10. In accordance with</p>	<p>By notes verbales of 19 and 29 December 2011, the State party argued that the Committee's conclusions on the investigation of the circumstances of the death of the author's son are based on the author's allegations only, without corroboration by other evidence. The State party explains that on 9 November 2004, the Prosecutor's Office opened a criminal case on the death of the author's son in the detention facilities of the Department of Internal Affairs of the Bazar-Korgon</p>	<p>19 July 2011 Follow-up: A/67/40 (Vol. I)</p>

	<p>article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The remedy should include an impartial, effective and thorough investigation into the circumstances of the author's son's death, prosecution of those responsible, and full reparation including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.</p>	<p>District. As a result, the senior inspector on duty when the death occurred was charged with abuse of power leading to a death of a person, with falsification of records on the detention of the victim, and with negligence. On 21 September 2005, the Suzak District Court sentenced the officer for negligence causing the death of a person. On 27 December 2005, the Supreme Court of Kyrgyzstan retained the part concerning "negligence" under article 316 of the Criminal Code of Kyrgyzstan and annulled the rest of sentence. The police officer did not serve his sentence, in virtue of article 66 of the Criminal Code, given that he reached a reconciliatory settlement with the brother of the victim (recognized as a lawful representative of the interests of the victim by the investigation and in court). In the light of these considerations, the State party disagrees with the Committee's conclusion on the violation of the author's rights.</p> <p>The author's counsel provided comprehensive comments on the State party's observations on 13 February 2012. Counsel</p>	
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		<p>notes that, by rejecting the Committee's Views and by refusing to provide victims with an effective remedy, the State party is violating its international obligations to cooperate in good faith under the Covenant. The State party has also failed to conduct an independent and effective investigation into the torture and death of Mr. Moidunov. The refusal to compensate his relatives, despite a formal request by their lawyers, violated a recently introduced modification in the Constitution obliging the State party to compensate individuals if an international body, such as the Committee, finds a violation of their rights. Counsel also notes that the State party has failed to introduce any changes to its legislation or practices, to avoid similar violations in future. Counsel's submission was transmitted to the State party, for observations, in February 2012.</p> <p>The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.</p>	
Communication No. 1503/2006,	8. The Human Rights Committee, acting under	The State party presented its observations on 2 August	25 March 2011

Akhadov	<p>article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated article 6, read in conjunction with article 14; article 7 and article 14, paragraph 3 (g); article 9; and article 14, paragraph 1, of the International Covenant on Civil and Political Rights.</p> <p>9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy including: conducting full and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with appropriate reparation, including compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.</p>	<p>2011, in the form of submissions prepared by various institutions, such as the Supreme Court, the Office of the Prosecutor General, the State Service on the execution of penalties, and the Ministry of Internal Affairs. All institutions present a chronology of the facts and proceedings related to the author's case, without addressing the Committee's Views. On 8 September 2011, the State party reiterated its previous observations, and contended that the examination of the criminal case file established that the author's allegations contained in the Committee's Views were not confirmed. The State party's submissions were sent to the author, for comments, on 10 August and 15 September 2011, respectively.</p> <p>The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.</p>	Follow-up: A/67/40 (Vol. I)
Communication No. 1470/2006,	8. The Human Rights Committee, acting under	On 2 August 2011, the State party provided information,	Views adopted on 28 March

Toktakunov	<p>article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 19, paragraph 2.</p> <p>9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee considers that in the present case, the information provided by the State party in paragraphs 4.2 above constitutes such a remedy to the author. The State party should also take all necessary measures so as to prevent occurrence of similar violations in the future and to guarantee the accessibility of information on death penalty sentences imposed in Kyrgyzstan.</p>	<p>prepared by different authorities. According to the information from the Supreme Court, the author did not appeal to the Supreme Court against the decision of the Bishkek City Court of 24 January 2004, even though, under the law, the Supreme Court was empowered to re-examine the case. In addition, the author's allegations about the refusal of the authorities to provide him with information were never brought to the attention of the Supreme Court. According to the information from the Office of the Prosecutor General, during a meeting with a prosecutor, the author explained that, in fact, he had been provided with the requested information concerning the sentences of death penalty in 2006, shortly after the submission of his communication to the Committee. The State party's submission was sent to the author on 11 August 2011, but no reply was received.</p> <p>The Committee decided to close the follow-up examination of the case with a finding of a satisfactory implementation of its recommendation.</p>	<p>2011</p> <p>Follow-up: A/67/40 (Vol. I)</p>
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<p>Communications No. 1369/2005, Kulov</p>	<p>9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated articles 7; 9, paragraphs 1, 3, and 4; and 14, paragraphs 1, 2, 3 (b), (c), (d), (e), and 5, of the International Covenant on Civil and Political Rights.</p> <p>10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.</p>	<p>Date of State party's response: 15 November 2010</p> <p>The State party contends that on 11 April 2005, on the basis of a submission by the General Prosecutor's Office, the Supreme Court of Kyrgyzstan annulled the author's sentences pronounced by the Pervomai District Court of Bishkek of 8 May 2002 and by the Bishkek City Court of 11 October 2002, and the Ruling of the Supreme Court of Kyrgyzstan of 15 August 2003, based on the absence of the elements of corpus delicti in the author's acts. This, according to the State party, means that the author is innocent, and entitles him to be granted full rehabilitation and includes a right to compensation for the damages resulting from his criminal prosecution. The State party further explains that pursuant to article 378 of the Criminal Procedure Code, courts are entitled to decide whether they need to invite a party to be present when a supervisory review of a case is conducted, but there is no obligation for the presence of the parties. The State party also contends that the 1998 Criminal Procedure Code provided no judicial control over</p>	<p>Views adopted on 26 July 2010</p> <p>Follow-up: A/66/40</p>
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<p>Communication No. 1312/2004, Latifulin</p>	<p>9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated articles 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights.</p> <p>10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, in the form of appropriate</p>	<p>The State party contends that the lawfulness and the grounds for the author's conviction were verified and confirmed by the appeal court as well as under the supervisory procedure. The law does not require the obligatory presence of a party during the examination of a case under the supervisory proceedings.</p> <p>Pursuant to changes in the legislation in 2007, article 169 (theft of others' property in a particularly large amount) was excluded from the Criminal Code. On this basis, the author can request,</p>	<p>10 March 2010</p> <p>Follow-up: A/66/40/Vol.I</p>

	<p>compensation. The State party is also under an obligation to prevent similar violations in the future.</p>	<p>under section 387 of the Criminal Procedure Code, to have his case re-examined in the light of the new circumstances. Thus, the author has the right to request the Supreme Court to re-examine his criminal case, given the legislative changes.</p> <p>The State party submission was transmitted to the author, for comments, on 20 October 2010. A reminder to the author was sent on 21 February 2011. A further reminder to the author will be prepared. The Committee may wish to await receipt of further comments prior to making a decision on this matter.</p> <p>The Committee considers the follow-up dialogue ongoing.</p>	
<p>Communication No. 1338/2005, Kaldarov</p>	<p>9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts before it disclose a violation of the author's right under article 9, paragraph 3, of the Covenant.</p> <p>10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with</p>	<p>Date of State party's response: 5 October 2010</p> <p>The State party recalls the facts of the case in extenso, repeating its previous submissions on the admissibility and the merits of the communication. The information submitted was prepared jointly by the Ministry of Internal Affairs and the Supreme Court of Kyrgyzstan.</p> <p>The State party also contends that the 1998 Criminal Procedure Code</p>	<p>18 March 2010 Follow-up: A/66/40/Vol.I</p>

	<p>an effective remedy, in the form of appropriate compensation, and to make such legislative changes as are necessary to avoid similar violations in the future.</p>	<p>provided no judicial control over decisions to arrest individuals, but that this was attributed the prosecutors. In order to align its legislation to the provisions of the Covenant, the State party amended its legislation in 2004, 2007 and 2009.</p> <p>The State party submission was transmitted to the author, for comments, on 18 October 2010. A reminder to the author was sent on 21 February 2011. A further reminder to the author will be prepared.</p> <p>The Committee may wish to await receipt of further comments prior to making a decision on this matter.</p> <p>The Committee considers the follow-up dialogue ongoing.</p>	
<p>Communication No. 1275/2004, Umetaliev and Tashtanbekova</p>	<p>10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kyrgyzstan of Eldiyar Umetaliev's rights under article 6, paragraph 1, and of the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.</p> <p>11. Under article 2, paragraph 3(a), of the</p>	<p>Date of State party's response: 11 September 2009</p> <p>The State party provides information from the General Prosecutor's Office, the Ministry of Finance, of Internal Affairs and the Supreme Court. All of the information provided relates to events and decisions which occurred prior to the Committee's Views but to which the Committee were not made aware.</p> <p>The following information was provided: Mr. A. Umetaliev brought an</p>	<p>Views adopted on 21 May 2010</p> <p>Follow-up: A/65/40</p>

	<p>Covenant, the State party is under an obligation to provide the authors with an effective remedy in the form, inter alia, of an impartial investigation in the circumstances of their son's death, prosecution of those responsible and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.</p>	<p>action before the Aktsyisk District Court against the State party for damages of 3 780 000 som and moral damages of 2 000 000 som for the death of his son E. Umetaliev. On 13 July 2005, the Aktsyisk District Court refused to satisfy the sum of 3 780 000 som but was provided 1 000 000 som for moral damages. The author's claim before the Supreme Court under the supervisory review procedure was dismissed on 26 November 2004. The authors currently receive social allowances under, the Law on State Allowances in the Kyrgyz Republic, which provides for social assistance to family who lost individuals who were their main source of income. Moreover, according to the law, such individuals receive additional social allowances that amount to triple the size of the "guaranteed minimal monthly consumption standard". Under the Law of the Kyrgyz Republic, "On state social aid for the family members of the descendants and victims of the events of 17-18 March 2002 in Aktsyisk District of Zhalalabatsk Region of Kyrgyz Republic", which was adopted on 16 October 2002 (№ 143), additional</p>	
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		<p>social support is provided to the author's family. On 29 March 2008, the criminal case of E. Umetaliev was registered as a separate proceeding by the investigator and was forwarded to the Chief Investigation Department of the Ministry of Internal Affairs of the Kyrgyz Republic. On 22 April 2008, the case was forwarded to the Department of Internal Affairs in the Zhalalabadsk Region for further investigation. On 15 April 2009, the South Department of the Prosecutor General's Office entrusted this case to the Interregional Department of Ministry of Internal Affairs. The investigation is ongoing. Proceedings were instituted against a number of officials of the republic. Mr .Dubanaev was tried by the Court Martial of the Bishkek Garrison, under Art.304 Part 4, 30-315 of the Criminal Code but on 23 October 2007 was acquitted due to failure of evidence. In the same verdict, Kudaibergenov Z. was found guilty, under Art.305 Part 2 Paragraph.5 of the Criminal Code, and Tokobaev K. under Art.305 Part 2 Paragraph 5 and Art.315 of the Criminal Code, and each of them were sentenced to 5</p>	
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		<p>years of a suspended sentence with a probation period of 2 years. Moreover, Kudaibergenov was deprived from taking an executive position in the Prosecutor General's Office for the subsequent 5 years. On 20 May 2008, the Court reviewed the sentences of both Kudaibergenov Z. and Tokobaev K., reducing them to 4 years and the probation period to 1 year. (The State party does not provide an explanation of the reasons behind the convictions. – articles only – but it would appear that Art.304 Part 4 relates to Abuse of Office that caused grave consequences, Art.305 Part 2 (5) Excess of authority or official powers that caused grave consequences and Art.315 Forgery in Office).</p> <p>The follow-up dialogue is ongoing.</p>	
<p>Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, Maksudov, Rakhimov, Tashbaev, Pirmatov</p>	<p>13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kyrgyzstan of the authors' rights under article 9, paragraph 1; article 6, paragraph 2, and article 7, read alone and together with article 2, of</p>	<p>Date of State party's response: 12 January 2009</p> <p>The State party did not respond on the admissibility and merits of this communication. The State party responds on the Views as follows. It submits that none of the individuals extradited were sentenced to death and that the Committee's fear in this regard was unfounded. The fact that the warrant for Mr.</p>	<p>16 July 2008</p> <p>Follow-up: A/65/40</p>

	<p>the Covenant. The Committee reiterates its conclusion that the State party also breached its obligations under article 1 of the Optional Protocol.</p> <p>14. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. The State is requested to put in place effective measures for the monitoring of the situation of the authors of the communication. The State party is urged to provide the Committee with updated information, on a regular basis, of the authors' current situation. The State party is also under an obligation to prevent similar violations in the future.</p>	<p>Maksudov's detention was issued by Andijan provincial court on 29 May 2005 and that the lawfulness of his remand in custody was not reviewed by a court or a procurator, is explained as follows: Mr. Maksudov was taken into custody on 16 June 2005 and was handed over to the law enforcement authorities on 9 August 2006; however, questions relating to the lawfulness of detention in custody only had to be referred to the courts according to Kyrgyz legislation after 3 July 2007. Pursuant to the Minsk Convention on judicial assistance and legal relations in civil, family and criminal cases of 22 January 1993, it was possible to take a person into custody on the basis of a decision by a competent body of the requesting State; at that time, Kyrgyz criminal procedure law did not require detention orders by the competent bodies of a requesting State to be reviewed by a procurator. Thus, according to the State party, there were no breaches of the law in connection with the detention of the authors. As for the Committee's doubts about the Kyrgyz authorities' ability to guarantee the safety in</p>	
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		<p>Uzbekistan of the authors after extradited, it should be noted that the provision of such guarantees would be regarded as an encroachment on Uzbekistan's sovereignty. Should the Committee desire further information about the health of the persons extradited, it should address an appropriate enquiry to the Office of the Procurator-General of the Republic of Uzbekistan. According to the State party, in extraditing the four authors to Uzbekistan, the Office of the Procurator-General of the Kyrgyz Republic strictly complied with its obligations under international treaties. Moreover, it should be noted that since the extradition of the authors, the Office has taken no further extraditions in connection with the Andijan events. The administrative and financial division of the Supreme Court upheld (no date provided) the rulings of Bishkek inter-district court and the administrative and financial division of Bishkek municipal court on the appeals lodged by Messrs. Maksudov, Rakhimov, Tashbaev and Pirmatov against the decision of 26 July 2005 by the Migration Service Department of the Kyrgyz Ministry of Foreign</p>	
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		<p>Affairs to deny them refugee status. After considering the Migration Service Department's grounds for refusing the aforementioned Uzbek citizens refugee status, the administrative and financial division of the Supreme Court concluded that article 1, F. (b), of the 1951 Convention relating to the Status of Refugees had been lawfully and validly applied when considering their petitions. Under Kyrgyz civil procedural law, the decisions of the Supreme Court enter into force as soon as they are adopted, are final and are not subject to appeal.</p> <p>Author's comments: None</p> <p>The dialogue is ongoing.</p>	
1402/2005, Krasnov	<p>9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7; article 9, paragraph 2; and article 14, paragraphs 1, and 3 (b) and 3 (c), of the Covenant.</p> <p>10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author's son with an effective remedy,</p>	<p>Previous follow-up information: A/66/40 (Vol. I), chap. VI, pp. 142–143</p> <p>On 8 September 2011, the State party reiterated its previous observations and provided a compilation of submissions prepared by its Supreme Court, the State Service on the execution of penalties, the Ministry of Internal Affairs, and the Office of the Prosecutor General. All institutions recall in detail the criminal proceedings concerning Mr. Krasnov. The State party concludes that the examination of the criminal</p>	<p>29 March 2011</p> <p>Follow-up: A/67/40</p>

	<p>including a review of his conviction taking into account of the provisions of the Covenant, and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future</p>	<p>case file established that the author's allegations contained in the Committee's Views were not confirmed.</p> <p>The State party's submission was sent to the author, for comments, on 15 September 2011.</p> <p>The Committee will await receipt of further information in order to finally decide on the matter.</p> <p>The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.</p>	
<p>Communication No. 1547/2007, Torobekov</p>	<p>7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts before it disclose a violation of the author's right under article 9, paragraph 3, of the Covenant.</p> <p>8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, in the form of appropriate compensation. The State party is also under an obligation to take all</p>		<p>27 October 2011</p>

	necessary steps to prevent similar violations occurring in the future.		
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¹ The Justice Initiative has helped victims submit four other communications that are also currently pending before the Committee; *Akunov v Kyrgyzstan* (filed on 3 October 2011); *Akmatov v Kyrgyzstan* (filed on 7 April 2011); and *Ernazarov v Kyrgyzstan* (filed on 11 March 2011).

² By raising this case as illustrative of the serious violations of the Covenant in Kyrgyzstan, the Justice Initiative does in no way intend to interfere with the Committee's consideration of the communication that is before it.

³ An overview of the status of the cases is contained in the annex.

⁴ Communication No. 1756/2008, *Moidunov v. Kyrgyzstan*, Decision of July 19, 2011, CCPR/C/102/D/1756/2008. The case concerns Tashkenbaj Moidunov who, after a dispute on the street, was taken to a police station in Kyrgyzstan. An hour later he was dead. An ambulance doctor who examined him found finger marks around his neck and asked if he had been strangled. The police said that Moidunov had had a heart attack, and then changed their story to say he hung himself. Despite the evidence, there has never been a proper investigation into his death. The Committee found that he had been killed in custody, and called for a proper investigation, prosecution and reparations.

⁵ CCPR/CO/69/KGZ, para. 7.

⁶ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 20; "The Special Rapporteur was not able to obtain information on any instance when judges and prosecutors are known to have ordered medical examinations at their own initiative in response to allegations or signs of abuse", para. 50.

⁷ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 37; see also paras. 39 and 53.

⁸ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 38.

⁹ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 40.

¹⁰ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 44-45.

¹¹ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 27-28.

¹² UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 23.

¹³ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 51 and 63.

¹⁴ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

¹⁵ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

¹⁶ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

¹⁷ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

¹⁸ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 14.

¹⁹ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21

February 2012, para. 54.

²⁰ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 37.

²¹ See UNHCHR, Report on technical assistance and cooperation on human rights for Kyrgyzstan, UN Doc. UNGA/HRC/17/41, 1 April 2011; and Human Rights Watch, “Where is the Justice?” Interethnic Violence in Southern Kyrgyzstan and its Aftermath, 16 August 2010, available at <http://www.hrw.org/en/reports/2010/08/16/where-justice-0>.

²² Human Rights Watch, *World Report 2011*, at 449.

²³ Report of the Kyrgyzstan Independent Commission of Inquiry, at ii.

²⁴ Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56.

²⁵ Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56.

²⁶ UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>.

²⁷ *Makhmudzhan Ergashev v. Russia*, ECtHR, Judgment of 16 October 2012, paras. 35-46.

²⁸ *Makhmudzhan Ergashev v. Russia*, ECtHR, Judgment of 16 October 2012, para. 72.

²⁹ *Makhmudzhan Ergashev v. Russia*, ECtHR, Judgment of 16 October 2012, paras. 76-77.

³⁰ Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, pp. 11-12.

³¹ Human Rights Watch, *Distorted Justice Kyrgyzstan's Flawed Investigations and Trials*, p. 27.

³² UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 55 and 56.

³³ Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56; Human Rights Watch, *Distorted Justice Kyrgyzstan's Flawed Investigations and Trials*, p. 34; Human Rights Watch, *World Report 2012*.

³⁴ UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 48 and 52.

³⁵ Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, UN Doc. A/HRC/15/2, para. 76.53.

³⁶ Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, UN Doc. A/HRC/15/2, para. 76.54.

³⁷ Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, UN Doc. A/HRC/15/2, para. 76.4.

³⁸ UN Special Rapporteur on the independence of judges and lawyers, *Report on Mission to Kyrgyzstan*, 18-22 September and 1 October 2005, UN Doc. E/CN.4/2006/52/Add.3, para. 29.

³⁹ UN Special Rapporteur on the independence of judges and lawyers, *Report on Mission to Kyrgyzstan*, 18-22 September and 1 October 2005, UN Doc. E/CN.4/2006/52/Add.3, para. 51.

⁴⁰ *Ibid*, at page 2; see also para. 76.

⁴¹ Human Rights Committee, Concluding Observations: Kyrgyzstan, CCPR/CO/69/KGZ, para. 20.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.