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**Human Rights Committee**

 Views adopted by the Committee under the Optional Protocol, concerning communications Nos. 3227/2018, 3228/2018, 3229/2018, 3230/2018, 3293/2019, 3619/2019, 3621/2019, 3770/2020[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communication submitted by:* Momtali Yusupov, Zhalaldin Sadykov, Sirozhidin Moidinov, Kakhramon Mamazhanov, Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbarov, and Tazhidin Abdullaev (represented by counsel, Sardorbek Abdukhalilov)

*Alleged victims:* The authors

*State party:* Kyrgyzstan

*Date of communications:* 10 May and 10 October 2018 ([[3]](#footnote-4)initial submissions)

*Document references:* Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 9 July 2018; 27 August 2018; 7 June, 3 June and 11 June 2019; 2 July 2020 (not issued in document form)

*Date of adoption of Views:* 15 July 2022

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

*Procedural issue:* Non-exhaustion of domestic remedies

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

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

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

1.1 The authors of the eight communications, all nationals of Kyrgyzstan, are: Momtali Yusupov, Zhalaldin Sadykov, Sirozhidin Moidinov, Kakhramon Mamazhanov, Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbarov, and Tazhidin Abdullaev. The authors claim that the State party violated their rights under various articles of the Covenant as shown below. The Optional Protocol entered into force for the State party on 7 January 1995. The authors are represented by counsel.

1.2 On 15 July 2022, pursuant to rule 97 (3), of the Committee’s rules of procedure, the Committee decided to join communications Nos. 3227/2018, 3228/2018, 3229/2018, 3230/2018, 3293/2019, 3619/2019, 3621/2019, 3770/2020, submitted by the same counsel, on behalf of eight different authors, for a joint decision, in view of substantial factual and legal similarities.

 Facts as submitted by the authors

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

2.2 The criminal prosecutions that followed these events were marked by reports of human rights abuses against detainees and defendants. One of the most prominent cases, where the defendants reported to have suffered from torture and mistreatment, was what is known as the “SANPA” case[[4]](#footnote-5). According to the investigators, on 12-14 June 2010, a group of ethnic Uzbeks started a fire that blocked a road not far from “SANPA” cotton processing plant, near Suzak, a village in the south of the country. The crowd poured mazut on the road and set it on fire, to block the passing cars. This mob then allegedly shot and killed drivers and their passengers who were forced to stop due to fire. As a result, 16 persons were shot dead, and nine vehicles were set on fire. On 14 June 2010, Zhaparov, then the prosecutor of Suzak District, initiated a criminal investigations into these events, and an investigation task force was created.

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

(a) On 28 June, at around 8p.m., three police officers came to *Momtali Yusupov’s* house in the village of Suzak. They told him that the car of the district police chief broke down, and since he was a mechanic, perhaps he could take a look. They all used a yellow colour vehicle to travel to a police station[[5]](#footnote-6). There, the officers asked him about participating in the “SANPA” events. They started cursing him, and one of the police officers suddenly hit him with a police baton. After that, three other officers started to beat him up. One of them used a butt of his machine gun to strike the author in his stomach and thighs. The author was handcuffed to a chair, and police officers placed a gas mask on his head, in order to suffocate him. He was simultaneously beaten by several police officers, to force him to confess his involvement in the “SANPA” events. The author refused to cooperate and for three to four hours, he was beaten by police officers. Finally, the author could not withstand the pain, and signed several pages of blank paper. He was told that if he signs a statement, he will be released within five to six days, so he signed a statement which was drafted for him, and additional blank pages. After that, the author was placed in the temporary isolation ward of the police station. There, the cell did not have any natural light, the lights were always on, and therefore, the author could not tell how long he spent there;

(b) Before being detained, *Zhalaldin Sadykov* worked as a mechanic, and on 28 June 2010, he went to get lunch for himself and his co-workers. While waiting for his food, he received a phone call from a person, who identified himself as a police officer. This officer said the author’s car matched the description of a vehicle that was involved in a road accident, and that the police needed to take a look. Police officers came to pick up the author, and took him to the Suzak district police station[[6]](#footnote-7). On the way there, the author was asked to pay 20 000 som to secure his release. The author refused to pay. When the author was at the police station, he saw his colleague, A.T., who was being beaten by police officers. The officers asked him to remove his shirt and pants, and started hitting him, using wooden sticks. They broke the author’s nose, several of his teeth were displaced, and the author could barely see through swollen eyes. The author was able to remember only first names of the officers, “Kalyk”, “Inal”, and “Marat”. Two additional officers came in, and based on the way they talked, the author realized that they were from Bishkek. One of the police officers pointed at him and accused him of participating in the killing of persons of Kyrgyz ethnicity, near “SANPA”. The author finally understood the reason of his arrest. Police officers called him “Nazi”, “fascist”, and other derogatory terms. “Marat”, who seemed to be inebriated, flicked ashes from his cigarette into the author’s ear, and when he finished smoking, extinguished the cigarette on the author’s left ear. The beatings continued, with police officers using batons to strike the author’s feet. Another officer came into the room, and demanded 100 000 USD, promising to release the author. When the author refused, they continued beating him. One of the reasons for torture, as the author was told, was the fact that he was an ethnic Uzbek. Officers also suffocated the author using a gas mask; they also placed a police helmet on his head, and started hitting him with sticks and batons. Finally, the author agreed to sign anything, just to avoid further torture. Police officers promised that he will be sentenced to three or four months of conditional release, if he cooperated. The beatings continued after the author was placed in the temporary isolation ward where he was handcuffed to a chair;

(c) *Sirozhidin Moidinov* was detained on 21 June 2010, when his car was stopped by several armed persons in military uniforms. They asked for his identification documents, and after checking them, asked him to go with them to the district police station[[7]](#footnote-8). There, the author was asked to write a statement regarding his whereabouts during the “SANPA” events. In his statement, the author stated that during the riots, he took his mother and sister to a safe location close to a border with Uzbekistan. Police officers read his statement, and one of them started shouting at the author, accusing him of lying. At this time, four or five police officers, two of them with face masks, entered the room and started beating up the author. His hands and legs were handcuffed, and the author was tortured with pliers, batons, sticks and a needle. With pliers, one of the officers removed a tooth, a needle was forced into the author’s stomach, and officers extinguished their cigarettes on the author’s body. After that, the author was placed in administrative detention cell, where he was hanged from the ceiling, his feet barely touching the ground. An officer started hitting him, breaking two ribs. He remembered the name of this officer as “Maksat”. He also remembers other names, such as “Inom”, “Rakhim”, and “Kalyk”. The author was then places in the temporary isolation ward of the Suzak district, where the torture continued, including by forcefully submerging him in a water tank. After continuous beatings, the author finally agreed to sign a confession, to avoid torture. He was promised that he would be released from courtroom during his trial. Police officers also threatened to rape his mother and sister, if he did not cooperate. The author finally signed a confession and two blank pieces of paper. Even after signing a confession, and a statement, which wrongfully implicated other people, the beatings continued;

(d) *Kakhramon Mamazhonov* was at his house on 22 June 2010, when four police officers asked him to come with them to the Suzak district police, to provide a statement on the hunting rifle that he owned. At the station[[8]](#footnote-9), the author was asked about “SANPA” events. The author was suddenly hit from his back, fell down on the floor, where several officers continued hitting him. The author was forced to remove his shirt and pants, and the officers continued beating him, demanding a confession in participating in the “SANPA” events. The author categorically refused – he stated that while his house was about 300-400 meters from the “SANPA” factory, he did not participate in the riots. One of the officers was sent to the author’s home, to retrieve his hunting rifle. When the officer brought his rifle, the beatings continued, and the author was accused of being a “sniper” who shot people during the riots. The same day after lunch, the author was further tortured by four men wearing military uniforms. During this time, he was kept handcuffed to a chair, with officers regularly beating him. The author was then placed in a temporary isolation ward, where two officers, “Kalyk” and “Zhyldyz”, continued to torture him, to beat him and to step on him with their shoes. The author was taken to the inner yard of the isolation ward, where he was doused with cold water. From the isolation ward, the author was taken back to the one of the offices where he was asked to remove his clothes and beaten again. Officers put a plastic bag on his head and suffocated him until he lost consciousness. Office Zhyldyz threatened to shoot the author, and then twice struck the author with his gun. Finally, the author signed a statement that was written for him;

(e) After the initial riots of June, the authorities attempted to hold reconciliation talks between Kyrgyz and Uzbek groups. *Abdulaziz Saliev* participated in one such event on 13 June 2010, which was held with a participation of the district and regional governors. During the event, participants were informed that the body of an unknown person was found in the nearby cornfields. The author was asked to help transport the body to the local morgue, and the author agreed. One of the ambulance doctors asked the author and a few other people not to leave, and called the police. Several police officers arrived, in military uniforms, and started beating the author. After that, the author was ordered to help up loading the body in the ambulance. The author resisted, but finally helped and stayed in the ambulance car on the way to the city of Zhalal-Abad. The author and two others, who were afraid of being suspected of murder, decided to jump off the ambulance. The author jumped, hit his head, and lost consciousness. When he woke up, he found himself in the Andizhan regional hospital in Uzbekistan where he stayed until 24 June 2010. During his stay, he was visited by the Kyrgyz Health Minister, Niazalieva, who promised medical assistance if the author returned to his home country. On 24 June 2010, the author and other patients were transferred by ambulance from Uzbekistan hospitals to Kyrgyzstan. When the ambulance crossed into Kyrgyz territory, several Kyrgyz doctors and police officers joined. At some point, the vehicle stopped, and the author was ordered out. The author was still holding his bandaged head, when he was accused of killing Kyrgyz people, was beaten by police officers and lost consciousness. When he came to his senses, he found himself in Suzak district hospital, where he had to stay for 16 days. On 12 July 2010[[9]](#footnote-10), two police officers arrived into the author’s hospital room, and took him to the Suzak police station. There, the author was beaten again, which resulted in the bleeding of the wound on his head. The author was then taken to a cell in the temporary isolation ward, where he was beaten again and tortured using a large needle and cigarettes. Despite this, the author refused to sign a confession. Therefore, as opposed to the other authors, there is no confession in the case materials, and the author did not testify against other defendants either. Subsequently, the author was further tortured, both inside the temporary isolation ward and the police station itself;

(f) *Abdulboki Mamadaliev* was at his home[[10]](#footnote-11) on 28 June 2010, when three unknown persons entered his yard, handcuffed him without his consent, and forced him into a police car[[11]](#footnote-12). The author was asked about his participation in the “SANPA” events, and when the author denied that he was involved, several police officers started beating him up. The author remembers first names such as “Altyn”, “Kalyk”, “Timur”, and the name of the deputy chief of Suzak police, N. Shadykanov. The author was subsequently handcuffed to a pipe in one of the offices, when the beatings continued. The author again refused to confess his participation in the “SANPA” events, and police officers undressed him, one of the officers, “Altyn”, grabbed his genitalia and demanded he confessed. For several hours, the author was kept naked and handcuffed to a pipe. When he was finally taken to a larger meeting room, a group of about twenty officers asked him to sing the Kyrgyz anthem. When the author said he did not know the text, he was beaten again. The beatings continued afterwards in “Timur’s” office, and in the cell for administrative detention, where the author was placed during the night. During the night, the author was taken to one of the offices, where he was asked to sign a confession. In the morning, the torture continued, when police officers used a pair of pliers to remove the nails from two of the author’s fingers. The author still refused to sign the documents, and police officers told him that they will simply sign his name. In this statement, it said that the author committed crimes near “SANPA”, and the statement also implicated other authors. On 29 June 2010, the author wrote a statement that it was not his signature on the confession. During all this time, the author was not given water, and he was thirsty. His relatives were not informed about his whereabouts. Starting from 29 June 2010, the author continued to be tortured, mostly by two officers “Timur” and “Rakhim”, who, during one of the beatings, broke the author’s left ear;

(g) On 27 August 2010, *Furkatbek Abduzhabbarov* received a phone call and was asked to come to Suzak police station to make a statement on a stolen item. The author was surprised that police officers would be busy investigating a simple theft during such difficult time for the country, but the next day in the morning, he decided to go the police station, with his father[[12]](#footnote-13). When he entered one of the offices, a police officer “Kalyk” handcuffed him to a pipe on the wall. The officers asked him few questions about a stolen item. Suddenly, their tone changed when they started asking about “SANPA” events. They cursed, and used pejorative terms for Uzbeks. Another officer, “Altyn”, came into the room, and started beating the author. The author was taken to another room, where he was beaten with police batons. “Altyn” accused him of killing Kyrgyz people during the riots. He was taken to a temporary isolation ward, where he suffered from enormous pain. Later, he was taken back to one of the rooms in the police station, where he saw his father. His father had been asked to bring 100.000 som, to secure the release of his son. The author was told that if he did not sign the prepared statements, they would bring his father, and beat him in front of him. The author, concerned for his father’s safety, signed all the papers;

(h) On 2 July 2010, four men entered *Tazhidin Abdullaev’s* house. One of them was a district police officer; the others introduced themselves as officers of Suzak District Department of Internal Affairs. They claimed that the author was involved in a traffic collision on 30 June 2010 and asked him to follow them to Suzak District Department of Internal Affairs. Upon arrival[[13]](#footnote-14), he was taken to the office of Deputy Chief of the Suzak District Department of Internal Affairs, where he was accused of participation in the riots near “SANPA”, subsequent murders and other crimes. Throughout the day, the author was beaten several times by different officers. They used ethnic insults and threatened to rape his daughters with a baton if he would not confess guilt in the crimes. The author was taken to a room, where he was forced to remove all his clothes. He was humiliated and his body was used to extinguish cigarettes. One of the officers put a plastic bag on the author’s head and started to strangle him. Later, the officers put a gasmask on him, while blocking the flow of air into the mask. An officer squeezed the author’s fingers with pliers. After being beaten, he was taken to a cell, where he lost consciousness due to the pain. In the evening, the officers continued to seek his confession, beating him and threatening to kill him for not willing to confess to the crimes. On 3 July 2010, the author was taken to a room, where several police trainees beat him with batons for approximately an hour. Due to the torture, the author signed a page, which contained his confession. The beatings continued until the court hearings started on 13 September 2010.

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

2.5 During their detention, the authors suffered lack of space, fresh air, natural light, among other things. The toilet was not separated from the rest of the cell, where eight to twelve detainees were held at a time, in a space of approximately seven square meters. In such conditions, the authors could not properly prepare for their defence, as there was no space, no desks and no lights. During the detention, the authors were constantly labelled as murderers of Kyrgyz people, and felt threatened. The deplorable conditions of detention had been documented by organizations such as the OSCE in their 2012 report.[[14]](#footnote-15) The temporary isolation wards, which should have been used only for short detention of a few hours, before the detainees were transferred to pre-trial detention centres, were instead used to detain people for several months. When the authors were transferred from one isolation ward to another, they were given a so-called “welcome” – they were beaten up by other detainees. The authors asked for medical assistance, but these requests were ignored.

2.6 The authors were charged under various articles of the Criminal Code of Kyrgyzstan, such as carrying, illegal purchase, sale, storage or transportation of firearms (article 241 of the Criminal Code); murder, while committing a crime of violence, causing risk of life to the person, motivated by ethnic or racial hatred (article 97); robbery, seizure of someone’s property while using violence, by an organized group, using weapons as well as organizing and participating in mass riots (articles 168, 174, and 233 of the Criminal Code). The trial started on 13 September 2010, in Suzak District Court. 19 defendants were brought to trial, including eights authors of the present communications. All defendants were Uzbeks, and more than 40 representatives of the victims were present. The hearings were disrupted by the relatives of the victims and had to be postponed. On 17 September 2010, the hearings were transferred to Nooken District Court, which has only one courtroom that fits 30 persons, and a so-called “cage”, a metal box of six square meters, which was intended to keep all 19 defendants.

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

2.8 On 30 September 2010, following another round of violence in the courtroom, attorneys for the defendants filed a complaint to the Zhalal-Abad Regional Court, which assured them that they would provide a more secure environment for further court hearings. At other times, defense attorneys continued receiving threats to their lives, if they continued their work.

2.9 Moreover, while the court proceedings were ongoing, during the breaks between hearings, the authors continued to be subjected to beatings and torture to force them to confess before the judge. On 30 September 2010, after the first court hearing, the defendants were taken to the Suzak police station, several police officers physically assaulted the authors. The officers who tortured the authors, demanded a confession during the court hearings, and told them they would be sentenced to life imprisonment notwithstanding their confession.

2.10 The presiding judge banned the relatives of the authors from attending the trial, and explained that he could not “guarantee their safety”, and due to the size of the courtroom. With the silent agreement of law enforcement officers, representatives of the victims attacked and assaulted the authors’ relatives while they were present in the Nooken District Court, in total impunity. During the trial itself, the representatives of victims interrupted the authors, did not allow their lawyers to ask questions, or put forward evidence. The presiding judge did not do anything to stop this. Several of the authors’ relatives were hospitalized[[15]](#footnote-16) with grave injuries.

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

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

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

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

 Complaint

3.1 The authors claim that the State party violated their rights under article 7 of the Covenant by torturing them in order to obtain confessions for crimes they did not commit. These included beatings, suffocation, and other forms of physical and mental torture. Three of the eight authors, Yusupov, Moidinov and Mamazhanov also provide a medical certificate, signed by an expert on forensic psychiatry, T.K. Asanov. The expert concludes that his findings are consistent with the torture alleged by the authors. The authors also provided detailed statements describing the treatment that they suffered.

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

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

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

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

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

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

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

3.9 The authors ask the Committee to find violations of all articles of the Covenant that they have put forward, and provide the authors with effective remedy, full compensation for the violations suffered, take steps to secure release of the authors, quash their verdicts and sentences, and if necessary, conduct a new trial upholding all fair trial rights, such as presumption of innocence and other procedural guarantees. The authors further request a prompt and impartial investigation into their allegations of torture, and payment of adequate compensation, with reimbursement of court fines, fees, and other court-related expenses.

3.10 The State party should also be requested to create an independent and effective procedure to investigate all allegations of torture, pursuant to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also introduce relevant changes in its Criminal Procedure Code, to ensure effective investigation of torture claims.

 State party’s observations on admissibility and the merits

4.1 On 14 May 2019 (for communications 3227-3230/2018), on 25 November 2019 (for communication Nos. 3619/2019, 3621/2019, and 3293/2019), and on 2 November 2020 (for communication No. 3770/2020), the State party provided its observations on admissibility and merits of the communications.

4.2 The State party submits that on 12 and 13 June 2010, near the cotton-processing plant “SANPA” in Suzak village, a group of persons of Uzbek ethnicity blocked part of the highway from Bishkek to Osh. These persons were armed with firearms, explosive substance in glass bottles, wooden sticks, and metal objects, burned and destroyed eleven cars, and in the process, shot the drivers and passengers of these vehicles.

4.3 As a result, unidentified bodies of five males, and 2 females were brought to the Zhalal-Abad regional hospital’s morgue. On 14 June 2010, the Suzak district police initiated a criminal investigation into these events. On 15 June 2010, another body was found, of Z.T.O., who was shot to death, and his car burned nearby. The same day, the body of A.B.Y. was found near the Suzak village, shot to death with a firearm. On 15 June 2010, police identified and detained one of the suspects, A.Y., who had a knife and cartridges in his possession. This person was subsequently charged under various articles of the Criminal Code of Kyrgyzstan, such as articles 97 (murder), 174 (purposeful destruction of someone’s property), and 241 (illegal possession of firearms).

4.4 On an unknown date, these criminal investigations were combined into one, and several other suspects were detained, such as Momtali Yusupov, Zhalaldin Sadykov, Sirozhidin Moidinov, Kakhramon Mamazhanov, Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbarov, and Tazhidin Abdullaev and others. Based on a court decision, they were all detained pending trial, and on 16 July 2010, their criminal case was sent to the Suzak District Court for trial.

4.5 On 23 November 2010, Furkatbek Abduzhabborov was sentenced to 25 years of imprisonment, and all other authors were sentenced to life imprisonment. By the appellate decision of the Zhalal-Abad Regional Court dated 9 March 2011, the first instance court’s decision was modified in part, and Furkatbek Abduzhabborov was also sentenced to life imprisonment. The rest of the verdict and sentence remained unchanged. By its 21 June 2011 decision, the Supreme Court of Kyrgyzstan upheld the lower court’s decision. It has to be noted that Sirozhidin Moidinov failed to submit his complaint under a supervisory review procedure.

4.6 The State party submits that the guilt of all the authors has been established by evidence, such as the crime scene investigation, examination of vehicles, bodies, and other items, identification of witnesses, and testimonies of 21 victims, two representatives of victims, and 18 witnesses. In addition, the authorities conducted forensic, chemical, biological, criminalistics examinations and provided other “indisputable evidence”. During the investigation, criminal cases of several defendants were separated into a different criminal investigation due to the fact that these persons could not be located.

4.7 Two years and six months after Zhalaldin Sadykov’s arrest, his wife, L.K.A., brought a complaint claiming that in June 2010, her husband was subjected to “unauthorized methods of inquiry and investigation”, such as beatings, unlawful detention, and forcing the author to confess. After a preliminary examination (“proverka”), on 28 June 2013, the Suzak district prosecutor’s office refused to initiate a criminal investigation. Three years and eight months after the initial detention, Sirozhidin Moidinov, Kakhramon Mamazhanov, and Momtali Yusupov filed complaint claiming that they were beaten, and forced to provide a confession. The same Suzak district prosecutor’s office decided not to initiate a criminal investigation into these claims, by a decision dated 14 February 2014. This decision was upheld by the Suzak District Court, Zhalal-Abad Regional Court, and the Supreme Court of Kyrgyzstan.

4.8 On 29 May 2014, a lawyer for Abdulaziz Saliev, Abdulboki Mamadaliev, Furkatbek Abduzhabbaro*v* filed a complaint, alleging that there were several crimes committed against them, by the law enforcement agents. These claims were examined under a preliminary examination procedure, and rejected on 6 June 2014. This decision was upheld by the Suzak District Court, Zhalal-Abad Regional Court, and the Supreme Court of Kyrgyzstan[[16]](#footnote-17). On 7 May and 2 October 2019, the Supreme Court of Kyrgyzstan decided to re-consider the criminal cases of Abdulaziz Saliev, Abdulboki Mamadaliev and Furkatbek Abduzhabbarov. Their verdict and sentences were left unchanged, however.

4.9 Regarding Tazhidin Abdullaev, the State party submits that the author did not complain about torture during the court proceedings, did not admit guilt, and testified that he was under the influence of alcohol, therefore, he does not remember anything, but that he did not participate in anything unlawful. Four years after his initial detention, the author filed a complaint, on 26 May 2014, which was rejected on 6 June 2014. The State party authorities conducted a preliminary investigation, contact the detention centres where the author was held, but did not find evidence that the author asked for medical assistance due to beatings. This decision was upheld by courts, last decision being by the Supreme Court, on 14 September 2015. The State party claims that the author complained about torture, four years after the fact, to “to exonerate himself” and “avoid serving his sentence”.

4.10 The State party submits however, that under the Constitution of Kyrgyzstan, and articles 442-444 of the Criminal Procedure Code, the authors failed to file a supervisory review complaint to the Supreme Court. Under the provisions of these articles, the authors had a right to bring a complaint on verdicts and sentences that came into force, under various circumstances, such as violations of rules to gather evidence, unlawful actions or inaction of the investigators, prosecutors or judges, and circumstances that indicate that the authors were innocent. Due to the fact that such supervisory review complaints have not been filed, the authors’ complaints before the Committee should be considered as inadmissible.

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

5.1 On 24 September 2019 (for communication Nos. 3227-3230/2018), and 19 February 2021 (concerning communications 3293/2019, 3619/2019, 3621/2019, 3770/2020), the authors respond to the State party’s observations on admissibility and merits of their communications and reiterate their previously stated claims.

5.2 The authors submit that the State party failed to conduct an effective investigation into their claims of torture, as required by the Committee under its jurisprudence. The State party authorities limited themselves to taking statements from police officers of the Suzak district police, who stated that they did not use torture. The prosecutor’s office did not conduct a forensic or a psychological examination, which would have identified the acts of torture. The State party authorities must make serious attempts at establishing the truth, and cannot prematurely stop the investigation, before identifying the perpetrators. According to the Committee’s jurisprudence, any deficiency in investigating claims of torture, may result lack of thoroughness of the investigation.[[17]](#footnote-18)

5.3 The State party does not respond to any allegations regarding the inhumane and degrading conditions of detention of the authors. The national legislation establishes the conditions of detention, such as hygiene requirements, fire safety, individual beds, nutrition and ventilation. It is also required that the cells have the necessary space of not less than 3.25 square meters per detainee. The detention of the authors in Suzak and Nooken district temporary isolation wards violates their rights to be free from inhumane treatment. The authors could not complain regarding the conditions of their detention, during the detention, due to hostile attitude of the administration of these wards.

5.4 The State party further fails to respond to the detailed claims of the authors under article 14 of the Covenant, such as continuing torture of the authors, threats against them, violence and threats against their relatives and lawyers. Furthermore, the authors could not call witnesses on their behalf, and could not cross-examine witnesses against them.

5.5 The State party also failed to respond to the allegations that the authors were held unlawfully. The jurisprudence of the Committee states that the detainee must be held only pursuant to a lawful court order, in accordance with a procedure established by law. During the pre-trial detention, the authors could not have proper facilities and time to meet with their lawyers, and prepare for their defence.

5.6 The authors properly filed complaints concerning torture, to the prosecutor’s office. When the prosecutor’s office refused to initiate a criminal investigation into these torture allegation, these decisions were challenged in court. The district, regional and the Supreme Court all sided with the prosecutor’s office and upheld their decision. The authors therefore exhausted all available and effective domestic remedies.

 Issues and proceedings before the Committee

 Consideration of admissibility

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

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

6.3 The Committee notes that the State party challenges the admissibility of the communications due to non-exhaustion of the available domestic remedies in that the authors failed to file a supervisory review complaint. In this connection, the Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[[18]](#footnote-19) The Committee notes that in the present case, the State party has not shown whether and in how many cases petitions to the Supreme Court for supervisory review procedures were successful in cases of allegations of torture and ill-treatment. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communications.

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

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

 Consideration of the merits

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

7.2 The Committee notes the authors’ claims that they were beaten, suffocated, tortured and forced to confess guilt for crimes they did not commit, and that these confessions were used against them, in violation of their rights under article 7, read alone and in conjunction with article 2 (3), and under article 14 (3) (g) of the Covenant. The Committee notes the authors’ contentions that on different dates, they were brought to police stations, where police officers, guards, cellmates took turn in beating them, suffocated them using plastic bags and gas masks. The authors were deprived of food, of access to water and sanitation, and to medical assistance. The Committee notes the authors’ allegations that the torture did not stop once they signed the confession, where they admitted in participating in the murders, and in some cases, also as a result of torture, named other persons as their accomplices; in fact, beatings continued, to punish them for killing persons of Kyrgyz ethnicity, as they were told. The Committee also notes that the authors submitted numerous complaints to the prosecutor’s office, to the police, and to the presiding judge during their trial, but that all these complaints were ignored or rejected. The Committee notes that the State party authorities never initiated a full criminal investigation into multiple allegations of torture, despite detailed descriptions from the authors, and instead, limiting themselves to preliminary examination (“*proverka*”) (para. 4.6 of the text).

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

7.4 The Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant[[19]](#footnote-20). Although the obligation to bring to justice those responsible for a violation of article 7 is an obligation of means, not of result[[20]](#footnote-21), States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their agents. In this regard, the Committee notes that the State party authorities did not conduct a medical examination of the authors following their torture complaints, and that three of the authors, Yusupov, Moidinov and Mamazhanov, provided a report, which was conducted by a private psychiatry expert, who concluded that his findings were consistent with the torture allegations by the authors. The Committee further notes that all authors provided written statements, describing in details the torture that they suffered, and indicating the names of the police officers who allegedly inflicted this torture.

7.5 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the authors of the communication alone, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information,[[21]](#footnote-22) especially when the injuries allegedly occur in the situations where the authors are detained by the State party authorities. In this regard, the Committee notes the statements from the authors detailing the torture they suffered while in detention. These claims were brought to the attention of the prosecutor’s office, and most importantly, the record reflects that the authors complained about torture in court, both during the trial and the appellate proceedings, but their claims were either ignored or rejected. The Committee notes therefore that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out effectively or that any suspects were identified, despite detailed reports from the authors, witness statements, and detailed report indicating findings of torture. In the absence of detailed explanations from the State party in this respect, due weight must be given to the authors’ allegations, provided they have been sufficiently substantiated. The Committee also notes that the court used the authors’ confession, among other evidence, in finding the authors guilty, despite their contention made during the trial hearings that they were tortured to elicit this confession. Accordingly, in these circumstances, the Committee concludes that the facts before it disclose a violation of the authors’ rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant.

7.6 Next, the Committee considers the authors’ claims under article 9 (1) that upon their initial apprehension, they were arbitrarily arrested and detained, since their arrest was neither recorded nor registered. The authors claim that this was done to enable the police officers to torture them. The State party does not provide any observations regarding these claims. The Committee recalls its general comment No. 35 (2014) on liberty and security of person according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. The Committee recalls the requirements of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. In the absence of any pertinent explanation from the State party regarding the authors’ whereabouts and status during the time in question, the conditions of their detention and the record of the arrest, the Committee considers that the authors’ rights under article 9 (1) of the Covenant were violated.

7.7 With respect to the authors’ claims under article 14 (1) of the Covenant, the Committee notes the uncontested facts that the relatives of the defendants, including those of the authors, were not allowed to be present at those hearings. The Committee notes that the State party failed to provide its observations in this regard. The presiding judge during the trial, according to the authors, explained that he could not guarantee the safety of the relatives of the authors (para. 2.10 of the text). The Committee recalls provisions of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial that “all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly”.[[22]](#footnote-23) Article 14 (1) of the Covenant acknowledges that courts have the power to exclude all or part of the public “for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.[[23]](#footnote-24) The State party, however, failed to explain why it was necessary to only exclude from the hearings the authors’ relatives under one of the justifications contained in article 14 (1), while the relatives of the victims were able to attend. In the absence of pertinent explanations from the State party, the Committee concludes that the State party applied a disproportionate restriction on the authors’ rights to a fair and public hearing, and therefore the authors’ rights under article 14 (1) have been violated.

7.8 The Committee also examines the authors’ claims that their right to have adequate time and facilities for the preparation of their defence were violated. The Committee notes the authors’ claims that the isolation wards and detention centres were overcrowded and did not have enough lighting and air, to enable the preparation of their defence. Furthermore, the authors claim that on several occasions, relatives of the victims threatened and physically attacked their lawyers inside and outside of the courtroom, and that the police and local prosecutors failed to intervene, creating a general sense of fear that is incompatible with the proper execution of a defence lawyer’s functions. This is further established by the unrefuted events of 12 October 2010, when two persons who introduced themselves as relatives of the victims, threatened the lawyers. Such threats continued on 14 October 2010 (para. 2.12). The Committee further notes that on 15 October 2010, the lawyers publicly refused to participate in court hearings fearing for their safety and security. In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the authors’ rights under article 14 (3) (b) and (d) of the Covenant.

7.9 The Committee also notes the authors’ allegations that their trial was characterized by a number of irregularities, such as disorder and violence caused by the relatives of victims attending the trial. The authors further claim that they were not able to call witnesses on their behalf, as that the witnesses, who were called, were threatened by the relatives of the victims. In this connection, the Committee recalls, in accordance with its long-standing jurisprudence, that article 14 of the Covenant guarantees the right of accused persons to call and question witnesses. This guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross‑examining any witnesses as are available to the prosecution.[[24]](#footnote-25) The Committee takes note of the fact that the State party failed to provide any information in this regard. In these circumstances, and on the basis of the material before it, the Committee concludes that the State party violated the authors’ rights under article 14 (3) (e) of the Covenant.

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

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

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

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

1. \* Adopted by the Committee at its 135th session (27 June – 27 July 2022). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. [↑](#footnote-ref-3)
3. Supplemented on 6 April 2020. [↑](#footnote-ref-4)
4. The name of the case derives from cotton processing plant nearby, “SANPA”. [↑](#footnote-ref-5)
5. The author submits that he was unlawfully held for six hours, before his detention was registered. [↑](#footnote-ref-6)
6. The author claims that he was unlawfully detained for more than four hours (above the allowed time), before his detention was registered. [↑](#footnote-ref-7)
7. The author claims that he was unlawfully detained for 3.5 hours (above the allowed time), before his detention was registered. [↑](#footnote-ref-8)
8. The author submits that his detention was registered more than 3 hours after he had been detained. [↑](#footnote-ref-9)
9. The author submits that his detention was registered more than 32 hours after he had been detained. [↑](#footnote-ref-10)
10. The author submits that his detention was registered 35 hours after he had been detained. [↑](#footnote-ref-11)
11. The detention of Mr. Mamadaliev was registered more than 35 hours after he had been detained. [↑](#footnote-ref-12)
12. The author claims that his detention was registered more than 11 hours after he had been detained. [↑](#footnote-ref-13)
13. The author submits that his detention was registered 11 hours after he had been detained. [↑](#footnote-ref-14)
14. Authors referring to this link www.osce.org/ru/bishkek/93783. [↑](#footnote-ref-15)
15. The authors claim that following persons were admitted to hospitals after being attacked: grandmother of Islombek Atabekov, and sister of Osmonali Otamirzaev. [↑](#footnote-ref-16)
16. On 18 November 2014, the Zhalal-Abad regional prosecutor’s office re-initiated the preliminary investigation, but on 5 December 2014, it again refused to initiated a criminal investigation, a decision which was confirmed by courts. [↑](#footnote-ref-17)
17. The author refers to the ECHR decision in *Assenov and others v. Bulgaria,* application No. 24760/94. [↑](#footnote-ref-18)
18. See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, Schumilin *v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, P.L. v. Belarus, decision of inadmissibility adopted on 26 July 2011, para. 6.2; and No. 2339/2014, *Rizvan Taysumov* *et al*. *v Russian Federation*, CCPR/C/128/DR/2339/2014 views adopted 11 March 2020, para 8.5. [↑](#footnote-ref-19)
19. See the Committee’s general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and its general comment No. 31, para. 18; *Boboev v. Tajikistan*, para. 9.6, and Zhanysbek Khalmamatov v Kyrgyzstan, para. 6.4. [↑](#footnote-ref-20)
20. *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3. [↑](#footnote-ref-21)
21. Communications No. 30/1978, *Lewenhoff* and *de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4. [↑](#footnote-ref-22)
22. See para. 28. [↑](#footnote-ref-23)
23. Ibid., para. 29. [↑](#footnote-ref-24)
24. See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39. [↑](#footnote-ref-25)