

Before the United Nations Human Rights Committee

Follow-up procedure

In the case of

Azimjan ASKAROV

against

Kyrgyzstan

(Communication No. 2231/2012)

**REPLY TO THE GOVERNMENT'S
SUBMISSIONS ON FOLLOW-UP**

to

The United Nations Human Rights Committee

c/o Petitions Team

Office of the High Commissioner for Human Rights

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I. FACTUAL SUMMARY

A. Background of the Case

1. Mr. Askarov, a human rights defender who has documented human rights violations by the police and prison authorities in his hometown of Bazar-Korgon for more than 10 years, was arrested on 15 June 2010 in the aftermath of ethnic violence in southern Kyrgyzstan. He was found guilty of instigating ethnic hatred, inciting disorder and being complicit in the murder of a police officer who died during the unrest, and given a life sentence.

B. The Committee's Views

2. On 12 November 2012, the Open Society Justice Initiative and Nurbek Toktakunov submitted a communication to the UN Human Rights Committee (hereinafter "Communication") on behalf of Azimjan Askarov.
3. The UN Human Rights Committee (hereinafter "Committee") in its Views, which was adopted on 31 March 2016 at the Committee's 116th session and made public on 21 April 2016, found that Mr. Askarov was tortured and denied fair trial procedural guarantees in violation of his rights under the International Covenant on Civil and Political Rights (hereinafter "ICCPR").¹
4. The Committee, acting under Article 5 (4) of the Optional Protocol, found a violation of Articles 2 and 7, read separately and in conjunction with Article 2(3), and Articles 9(1), 10(1) and 14(3)(b) and (e) of the ICCPR,² and reiterated the obligation of the State party under Article 2 (3) (a) of the ICCPR to provide Mr. Askarov with an effective remedy. This required Kyrgyzstan to make full reparation to Mr. Askarov, take appropriate steps to immediately release him, quash his conviction and, if necessary, conduct a new trial in due compliance with fair trial guarantees.
5. Pursuant to the Committee's Views, Kyrgyzstan was required to submit information, within 180 days, on the measures taken to remedy the determined violations, and to publish the Views.³

C. Relevant Domestic Developments After the Committee's Views

Constitutional Obligation to Implement Decisions of Human Rights Bodies

6. At the time of the decision of the Committee on the case of Mr. Askarov, the Constitution of Kyrgyzstan contained several clauses related to the priority of human rights norms over other standards, as well as an obligation to provide a remedy if an international body found that the State violated the rights of an individual under Kyrgyzstan's international obligations.⁴

¹ *Azimjan Askarov v. Kyrgyzstan*, UN Human Rights Committee, Views on Communication No. 2231/2012, CCPR/C/116/D/2231/2012, adopted 21 April 2016, available at <https://mutabar.org/wp-content/uploads/2016/04/Azimjan-Askarov-v.-Kyrgyzstan.pdf> (hereinafter "HRC Views, Askarov").

² *Ibid.*

³ *Ibid.* para. 11.

⁴ Before the amendment, Article 41(2) of the constitution of the Kyrgyz Republic read: "Everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage."

7. On 28 July 2016, a constitutional reform initiative was launched by three parliamentary groups.⁵ In December 2016, the referendum took place and the Constitution was amended.⁶ On 15 January 2017, the new amendments to the Constitution entered into force, adopted through a referendum with a single “yes or no” vote on 26 constitutional issues. Several amendments rolled back human rights guarantees, including the removal of the explicit obligation to restore rights and provide compensation in cases where international bodies had established there had been a human rights violation. Article 41(2) of the amended Constitution guarantees “everyone the right, pursuant to international treaties, to petition international human rights bodies to seek relief from violations of rights and freedoms,” but does not explicitly stipulate that a remedy should be provided.
8. Constitutional norms that were in force at the moment of the adoption of the Committee’s Views should apply to the case of Mr. Askarov. The Kyrgyz Supreme Court’s decision in *Moidunov* in 2017 is a clear confirmation that the amendment of the Constitution does not change the Government’s obligation to provide redress to victims of human rights abuses.⁷ In addition, despite the amendments to the Constitution, Kyrgyzstan remains a party to a range of international human rights treaties that require the implementation of Committee’s decisions.

Relevant Norms of the Criminal Procedure Code

9. The Kyrgyzstan Code of Criminal Procedure in force at the time of adoption of the Committee’s Views on Mr. Askarov’s case provided that “[a] finding by an international body, in accordance with international treaties to which the Kyrgyz Republic is a State Party, of a violation of human rights and freedoms in the course of the review of the criminal case in question by the court of the Kyrgyz Republic” is grounds for retrial.⁸ This provision is retained in the Criminal Procedure Code after the amendments that came into effect in 2019.⁹

D. International Calls for Ms. Askarov’s Immediate Release

10. On 31 March 2020, Amnesty International, Civil Rights Defenders, Committee to Protect Journalists Front Line Defenders, Helsinki Foundation for Human Rights, Human Rights Watch, International Federation for Human Rights and OMCT sent a letter to the President of Kyrgyzstan, Sooronbay Jeenbekov, calling upon him to urgently release Mr. Askarov, and until then, ensure that actions are

⁵ Vecherniy Bishkek, *News agency: The Parliament suggests to hold a referendum to change the Constitution in the autumn*, Вечерний Бишкек (28 July 2016), available at:

https://www.vb.kg/doc/344168_parlament_predlagaet_provesti_osenu_referendym_po_izmeneniu_konstitucii.html.

⁶ Freedom House, “Kyrgyzstan’s 2016 Constitutional Referendum”, Analytical Brief, , written by Almaz Esengeldiev (2017) available at: <https://freedomhouse.org/report/analytical-brief/2017/kyrgyzstans-2016-constitutional-referendum>

⁷ In March 2017, Kyrgyzstan’s Supreme Court ordered the government to pay compensation to the family of Mr. Moidunov, who died after being tortured by police. This decision affirmed the prior findings of the UN Human Rights Committee. See Press Release, Open Society Justice Initiative, Kyrgyzstan Accepts UN Human Rights Committee Ruling with Compensation Award (20 March 2017), <https://www.justiceinitiative.org/newsroom/kyrgyzstan-accepts-un-human-rights-committee-ruling-compensation-award>.

⁸ Kyrgyzstan Code of Criminal Procedure (CCP), Article 384(2-1): “The following shall be regarded as new circumstances: [...] 3) finding by an international body, in accordance with international treaties to which the Kyrgyz Republic is a State Party, of a violation of human rights and freedoms in the course of the review of the criminal case in question by the court of the Kyrgyz Republic.”

⁹ *Ibid.*, Article 442.4 (3).

taken to protect his health, ensure access to appropriate hygiene, screening and if needed, medical assistance¹⁰. In a letter dated 7 May 2020, members of the United State Senate called on President Jeenbekov to release detainees “without preconditions” who are currently serving sentences for engaging in peaceful activism.¹¹ In the letter, the senators mention only Mr. Askarov by name as one such individual who should be released. The senators urge the release of detainees “on the merits of their cases,” but particularly in light of concerns regarding the spread of COVID-19. The letter notes that Mr. Askarov is “suffering from deteriorating health,” due to his advanced age and risk of exposure from fellow prisoners, and calls for his immediate release.

11. On 8 May 2020, Mary Lawlor, the Special Rapporteur on the situation of human rights defenders, called for the immediate release of Mr. Askarov and for proper review of his appeal in accordance with his fair trial rights.¹² She noted that the UN’s “many communications to have Mr. Askarov’s case quashed have been ignored by the Kyrgyzstani authorities.” Ms. Lawlor further called for the government of Kyrgyzstan to allow for Ms. Askarov’s release due to COVID-19 and the increase risk that it poses to him, given his advanced age and underlying health conditions.

E. Retrial at the Appeal Level of the Case of Mr. Askarov

The Retrial at the Chuy Regional Court

12. On 12 June 2016, the Supreme Court of Kyrgyzstan, “in the light of new circumstances and in accordance with the decision of the Committee of 21 April 2016 and in view of the statements of the [Mr. Askarov’s] lawyer Toktakunov,”¹³ vacated the appeal judgment and the Supreme Court’s decision—and ordered a new review of the case by the appeal court.¹⁴ The Supreme Court, however, did not vacate the judgment of the trial court.
13. Following the decision of the Supreme Court to initiate proceedings in the case, it was remanded for retrial to the Chuy Regional Court in light of “new circumstances.” The Supreme Court did not quash the defendant’s conviction but “resum[ed]” the proceedings in the case¹⁵ in accordance with Article

¹⁰ Letter to Kyrgyz President Jeenbekov to Release Azimjan Askarov due to COVID-19, Press Release, International Federation of Human Rights (31 March 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/letter-to-kyrgyz-president-jeenbekov-to-release-azimjan-askarov-due>.

¹¹ United States Senate Committee on Foreign Relations, Press Release, Menendez, Six Senate Colleagues Call on Kyrgyzstan President to Release Prisoners (8 May 2020), <https://www.foreign.senate.gov/press/ranking/release/menendez-six-senate-colleagues-call-on-kyrgyzstan-president-to-release-prisoners->.

¹² United Nations Human Rights, Office of the High Commissioner, Press Release, Kyrgyzstan must uphold its human rights obligations and release human rights defender Azimjan Askarov, says UN expert (8 May 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25872&LangID=E>.

¹³ International Commission of Jurists, 2019, para. 31.

¹⁴ *Ibid.*

¹⁵ International Commission of Jurists, *The Azimjan Askarov Case, Judicial Proceedings Based on the Decision of the UN Human Rights Committee - A Legal Opinion*, para. 39.(2019), available at <https://www.icj.org/wp-content/uploads/2019/07/Kyrgyzstan-Askarov-report-II-Advocacy-analysis-brief-2019-ENG.pdf> (hereinafter “International Commission of Jurists, 2019”).

442 of the Code of Criminal Procedure.¹⁶ This decision meant that the investigation results from the initial case would remain as evidence and there would not be a new investigation into the case .

14. The retrial took place from 4 October 2016 to 24 January 2017. According to a comprehensive report published by the *International Commission of Jurists [ANNEX-I]*, and statements made by other human rights organizations monitoring the retrial, the proceedings were marred by irregularities and violations.¹⁷
15. At the conclusion of the retrial on 24 January 2017, the Chuy Regional Court upheld the original life sentence imposed on Mr. Askarov in 2010. As explained in Part II, the retrial did not provide a thorough and fair reconsideration of the case in accordance with the right to a fair trial and did not remedy the violations of Mr. Askarov’s rights established by the Committee.¹⁸

Review before the Supreme Court

16. Mr. Askarov filed an appeal to the Supreme Court on 14 February 2020 and a review was scheduled for 25 February 2020. Only 16 people were admitted as observers.
17. On 25 February 2020, the review was postponed to 6 April 2020, due to the prosecutor’s office asking for additional time to study the complaint.
18. On 22 March 2020, the Government of Kyrgyzstan declared a state of emergency and introduced restrictions on public life as a response to the COVID-19 outbreak. The hearing of the case in the Supreme Court is currently scheduled for 13 May 2020, but it is unclear whether it will actually take place.

F. Review of the Sentence Due to Amendments to the Criminal Code of Kyrgyzstan

19. In addition to the judicial process based on the decision of the Committee, Mr. Askarov applied for a review of his sentence due to the amendments of the Criminal Code of Kyrgyzstan that came into force on 1 January 2019.¹⁹ On 30 July 2019, the Chuy Regional Court denied his request, and on 2 December 2019, the Supreme Court upheld the punishment of life imprisonment, while commuting some other lighter sentences.

G. Lawsuit For Non-implementation of the Committee’s Decision

20. On 23 November 2019, Mr. Askarov submitted a request to the Government of Kyrgyzstan to inform them of the measures taken to implement the Views of the Committee in his case. He received no reply from the Government. On 4 December, 2019 he received a letter from the

¹⁶ CCP, Article 442: “1. A convicting judgment, determination, resolution of the court that has entered into legal force may be repealed and the proceedings in the case resumed in light of new or newly discovered circumstances.”

¹⁷ International Commission of Jurists, 2019; Front Line Defenders, *Azimjan Askarov sentenced to life imprisonment*, <https://www.frontlinedefenders.org/en/case/azimjan-askarov-sentenced-life-imprisonment>; *World Organization Against Torture*, *Kyrgyzstan: Life sentence of Mr. Azimjan Askarov upheld by Chuy Regional Court of Kyrgyzstan - Urgent Appeal* (31 July 2019), <https://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2019/07/d25463/>; Amnesty International, Public Statement, *Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally*, (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

¹⁸ International Commission of Jurists, 2019, para 127.

¹⁹ Amnesty International, Public Statement, *Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally* (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

Ombudsman's office that recounted judicial decisions related to his case and stated "you used available domestic remedies." In February 2020, through one of his counsel, Valerian Vakhitov, Mr. Askarov submitted an administrative lawsuit to the Interdistrict court of Bishkek asking to annul the act of the Government that forwarded the request for the implementation of the View to the Ombudsman, as the Ombudsman institution is not part of the executive. He also requested that the Court order the Government to publish the Views of the Committee, to request the Prosecutor General to reopen the case in light of the decision, and to inform Mr. Askarov about the measures taken to implement the Views.

21. The hearing on this administrative lawsuit was scheduled for 11 May 2019. However, the judge informed the parties that she cannot hear the case as she learned the same day that the Interdistrict court will be transformed into an Administrative Court in light of a law adopted in December 2019 and signed by the President in April 2020. Media reported that the law was not published and the situation was a surprise to all the parties present.

II. FOLLOW-UP TO THE COMMITTEE'S VIEWS

A. Summary of Government's Follow-up Comments

22. The Government of Kyrgyzstan submitted to the Committee its Comments as part of the follow-up procedure to the Committee's Views in the case of Azimjan Askarov on 25 May 2017 ("*First Comments*") and 26 February 2020 ("*Second Comments*"), respectively.
23. The Government continues to deny that there has been any violation of the ICCPR, and refuses to implement the Views in violation of its obligation to cooperate in good faith with the Committee.

The First Comments (dated 25 May 2017)

24. The *First Comments* by the Government in the framework of the follow-up procedure are dated 25 May 2017, however, they were only transmitted to the Open Society Justice Initiative on 20 September 2019. The *First Comments* confirm that with the exception of the new appeal-level hearing of the case (discussed below), the Government did not take steps to implement the Views of the Committee or provide remedies to Mr. Askarov. The Government refuses to accept the Committee's findings, denies that Mr. Askarov suffered torture, and continues to insist on the fairness of Mr. Askarov's conviction.
25. In its *First Comments*, the Government repeats its version of the facts of the case, describes the new hearing of the case at the appeal level, and then comments on a number of open letters that Mr. Askarov submitted to different international institutions. The Government makes a statement that the case should be considered exclusively in the framework of criminal procedure. It argues that Kyrgyzstan has taken all the necessary steps to implement the Views by cancelling the appeal and Supreme Court's decisions on the criminal case against Mr. Askarov and conducting a retrial at the appeal level that was open to observers and media. It argues that Kyrgyzstan provides guarantees of fair trial in line with international standards. Without providing evidence beyond references to the same witnesses, mostly police and government officials, the Government states that "Mr. Askarov's guilt was fully proved by the testimonies of witnesses, victims, expert opinions and material evidence."

26. The Government highlights that the new decision of the appeal court that confirmed the original trial court's decision can be appealed to the Supreme Court under supervisory review procedure.
27. The Government also argues that Mr. Askarov has to exhaust domestic remedies for the Committee to consider his follow-up submission.
28. With regard to the finding of the Committee that Mr. Askarov was tortured, the Government repeats the same assertions that had been considered by the Committee in its Views: that Mr. Askarov's testimony had been confirmed by "nothing and by no one" and that "Mr. Askarov's arguments were refuted by the testimonies of over 100 witnesses and victims." It repeats information about the same investigations that took place before the Committee issued its Views and adds that "the investigation proved that Mr. Askarov was provided with food and he had access to proper medical care."
29. The Government asserts that in order to receive compensation, Mr. Askarov would have to be acquitted in a criminal trial and the alleged perpetrators of the torture would need to be convicted. The compensation would need to be established in a judicial process.
30. The Government argues that there is no ethnic discrimination in Kyrgyzstan and cites anti-discrimination legislation and some statistical data.

The Second Comments

31. On 26 February 2020, the Government submitted its *Second Comments* in the framework of the follow-up procedure. It provided a short summary of the consideration of the case by domestic authorities.
32. The *Second Comments* assert that, in line with Kyrgyzstan's willingness to cooperate with the Committee, a retrial was conducted in the case of Mr. Askarov in accordance with the principles of the right to fair trial, and that it was open and covered by media and several observers were able to attend the hearings. The Government asserts, without providing detailed explanations or evidence, that "Mr. Askarov's guilt was fully proven by the testimonies of witnesses, victims, expert opinions and material evidence." It states that it finds the Committee's request to immediately release Mr. Askarov "unacceptable" since his guilt has been "fully proved by the courts of the Kyrgyz Republic."
33. The Government repeats its earlier assertion that Mr. Askarov's testimony about his torture had been confirmed by "nothing and by no one," ignores the medical evidence, and dismisses the findings of the Committee in this regard.
34. The Government states that the Kyrgyz Republic can provide adequate compensation only pursuant to a judicial decision.

B. Failure to Implement the Views of the Committee

35. States that have ratified the Optional Protocol have an obligation to cooperate with the Committee in good faith and accept its authoritative interpretation of whether the ICCPR has been violated in individual cases brought under the Protocol.
36. As the Committee reiterates in its Views, "by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a

violation of the Covenant or not.”²⁰ This obligation has been clarified in General Comment 33, in which the Committee explains that the “duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations,”²¹ and emphasizes that “[t]he views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the ICCPR itself charged with the interpretation of that instrument.”²²

37. The Kyrgyz Republic has failed to implement the Views of the Committee or to provide remedies for the violations. It has neither immediately released Mr. Askarov, nor conducted an effective investigation of the torture of Mr. Askarov. Rather, the Supreme Court remanded the case for retrial at the appeal level to the Chuy Regional Court due to new circumstances. The retrial proceeded without quashing the Mr. Askarov’s conviction but with “resumption” of the proceedings in the case. The retrial was marred by violations and irregularities. During the retrial, despite the evidence presented, the Court failed to effectively examine the allegations of torture of Mr. Askarov in detention. The Court also failed to conduct new investigations, hear new witnesses or question elements on which the initial conviction was based, which means that the retrial did not respect the presumption of innocence or comply with the requirements of a fair trial. These proceedings are therefore insufficient to remedy the violations of human rights found by the Committee. The Government has not provided any reparations or compensation to Mr. Askarov and has not published the Views of the Committee.
38. Conducting an appeal-level review of the case with multiple violations of fair trial guarantees and the submission of formal Comments to the Views cannot be a substitute for their implementation. By refusing to accept the conclusions of the Committee regarding the interpretation and violations of the ICCPR in this case, and refusing to implement the remedies identified, Kyrgyzstan has failed to cooperate in good faith with the Committee and to provide an effective remedy, as required by the Optional Protocol and the ICCPR.

Failure to Release Mr. Askarov Immediately and to Conduct a Fair Trial

39. The Committee in its Views, required Kyrgyzstan to take appropriate steps to immediately release him, quash his conviction and, if necessary, conduct a new trial in due compliance with fair trial guarantees.²³ However, the Supreme Court of Kyrgyzstan failed to fulfill these requirements and simply remanded the case for retrial to the Chuy Regional Court on the grounds of “new circumstances.”
40. The retrial, which took place from 4 October 2016 to 24 January 2017 at the appeal level, was marred by irregularities and violations according to a comprehensive report published by the International

²⁰ HRC Views, Askarov, para.11.

²¹ HRC, General Comment 33 (CCPR/C/GC/33), The Obligation of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 5 November 2008, para.15 (citing the Vienna Convention on the Law of Treaties, 1969, Article 26).

²² *Ibid.* para. 13.

²³ HRC Views, Askarov, para.10.

Commission of Jurists, and also to the statements made by other human rights organizations monitoring the retrial.²⁴

41. *The retrial proceeded without quashing Mr. Askarov's conviction but with "resumption" of the proceedings in the case.*²⁵ On 12 June 2016, following the Committee's decision of 21 April 2016, the Supreme Court of Kyrgyzstan vacated the original judgments and remanded the case for retrial at the appeal level to the Chuy Regional Court, due to new circumstances. However, on 4 October 2016, at the first hearing, the Court dismissed the defence attorney's request to return the case to the prosecutor for additional investigation. By failing to conduct a new investigation, the Court relied heavily on the earlier proceedings, showing a strong tendency to confirm, rather than question or reexamine, the earlier findings. However, the earlier findings resulted from an investigation and trial that were tainted by torture and other human rights violations.²⁶ In particular, the Court failed to exclude information obtained in violation of Article 7 of the ICCPR and therefore the retrial did not meet the standard of fairness, and failed to comply with the prohibition on the use as evidence of information obtained by torture.
42. The International Commission of Jurists²⁷ concluded that the requirements of a fair trial required that the retrial of Mr. Askarov should be conducted disregarding the previous conviction of Mr. Askarov, which the Committee had held should be quashed. Fairness of the retrial should be untainted by evidence already found to have violated the requirements of a fair trial and that a full opportunity be given to the defendant to prepare his defense, to cross examine witnesses against him, and to call his own witnesses.
43. *The Court failed to hear new witnesses and to collect new evidence.* The Court did not invite any new witnesses in addition to those heard during the first trial. Mr. Askarov was not able to call and examine witnesses on an equal footing with the prosecution. The Court refused to grant a motion by the defense to allow two potentially significant witnesses: Mr. Askarov's wife, Khadija, and his brother, Khakimjon.²⁸ According to Mr. Askarov, over 10 additional witnesses could have been called to testify in his defense, but they were never subpoenaed.²⁹ Seven police officers who had witnessed Officer Sulaimanov's killing were granted victim status in the case, rather than called as witnesses, which was the status that they had been afforded throughout the initial stages of the trial. Given the fact that these police officers were key witnesses and the fact their testimony was clearly critical to establishing the facts in the case, this decision remained unconvincing for the observers.³⁰

²⁴ International Commission of Jurists, 2019; Front Line Defenders, *Azimjan Askarov sentenced to life imprisonment*, <https://www.frontlinedefenders.org/en/case/azimjan-askarov-sentenced-life-imprisonment>; World Organization Against Torture, *Kyrgyzstan: Life sentence of Mr. Azimjan Askarov upheld by Chuy Regional Court of Kyrgyzstan - Urgent Appeal* (31 July 2019), <https://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2019/07/d25463/>; Amnesty International, Public Statement, *Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally* (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

²⁵ International Commission of Jurists, 2019, para 4.

²⁶ *Ibid.* para 122.

²⁷ *Ibid.* para 128.

²⁸ *Ibid.* para 64.

²⁹ *Ibid.* para 67.

³⁰ *Ibid.* para 71.

44. *The Court failed to treat the inconsistencies and conjectures in oral testimony as grounds for doubt and failed to consider gaps in documentary evidence.* A significant proportion of prosecution witnesses were reluctant to go into detail concerning the events leading to the death of the police officer, and their testimonies were vague and confused, at best.³¹ However, the Court accepted that evidence without questioning clear inconsistencies in the testimonies. The Court also did not properly address questions raised regarding the credibility of some of the officer witnesses who might have acted with malice because Mr. Askarov, in his capacity as a human rights defender and investigative journalist, had investigated them for alleged misconduct³². Furthermore, the video that allegedly shows Mr. Askarov standing on the bridge on the day of the murder was never submitted to the Court despite repeated requests by Mr. Askarov to the prosecution to produce do so.³³
45. As a result, the retrial of Mr. Askarov did not respect the presumption of innocence or comply with the requirements of a fair trial sufficient to remedy the violations of Mr. Askarov's rights under Article 14 of the ICCPR, as found by the Committee.
46. Contrary to the assertion by the Government in its *Second Comments*, the mere fact that the court hearing was open to public and attended by several civil society actors does not make it "fair" under Article 14 ICCPR. The right to a fair trial required that Mr. Askarov's previous conviction be disregarded at his retrial, in accordance with the Committee's decision to quash it; that the retrial should be untainted by evidence already found to have violated the requirements of a fair trial; and that the defendant be given a full opportunity to prepare his defence, to cross examine witnesses against him, and to call his own witnesses.
47. The Government has not released Mr. Askarov and, to date, he spent almost 10 years in prison.

Failure to Conduct an Effective Investigation Regarding Torture of Mr. Askarov

48. In its *First* and *Second Comments*, the Government continues to discuss the merits of the criminal case against Mr. Askarov and ignores the medical evidence of ill-treatment and dismisses the Committee's clear findings that Mr. Askarov had been subjected to torture.
49. We reiterate the original Communication and the Views. We would like to remind the Committee that the Views already noted that the findings of the medical forensic examinations conducted by independent experts were consistent with other evidence suggesting that Mr. Askarov was subjected to acts of torture.³⁴ The Government did not take any steps—either as a separate procedure or as part of the retrial—to conduct a thorough investigation of whether Mr. Askarov had been tortured, or to identify and prosecute those responsible. Investigations described in the Government's responses took place before the Committee issued its Views and ruled that they did not constitute an effective investigation. The Committee noted that the inquiry that was conducted in 2013, while extensive, lacked the element of impartiality. The Government has not conducted any further investigation, and has not remedied any of the deficiencies in the original investigation that were identified by the Committee.

³¹ *Ibid.* para 44.

³² *Ibid.*, para. 58.

³³ *Ibid.* para 48.

³⁴ HRC Views, Askarov. para. 8.2.

50. During the retrial, the Court failed to effectively examine the allegations of unlawful detention and torture of Mr. Askarov in detention, despite the retrial and the evidence presented. The Court repeatedly postponed consideration of Mr. Askarov’s claims of unlawful detention, torture and ill-treatment, despite the defense consistently raising the issues throughout the trial. This resulted in failure to examine these claims at the retrial.³⁵ Credible information was not used to investigate allegations of torture and to bring those responsible to account. By finding that Mr. Askarov’s testimony had been confirmed “by nothing and by no one,” the Court not only ignored the medical evidence of ill-treatment but also dismissed the clear findings of the Committee that Mr. Askarov had been a victim of torture, on the grounds that the Committee had been confused and misled.³⁶

Failure to Provide Adequate Compensation to Mr. Askarov

51. A fundamental component of the system of human rights protection established by the ICCPR and the Optional Protocol is the obligation of States Parties to provide an effective remedy where violations are identified. Article 2(3) of the ICCPR requires that State Parties “ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy.” The Committee also emphasizes this obligation in its General Comment 33, highlighting that “an effective and enforceable remedy” should be provided in case of a violation.³⁷ This right to a remedy is examined in detail in the *UN Basic Principles on the Right to Remedy*,³⁸ which clarifies that “a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted.”³⁹
52. The Committee in its Views on this case specified that the Government was required to provide full reparations including appropriate compensation as part of the effective remedy. The Government has failed to give effect to this requirement, as Mr. Askarov has not been provided with any compensation for the torture that he suffered or any other violation. Instead, the Government, in its *First Comments*, stated that Mr. Askarov first needs to be acquitted, and the alleged perpetrators of torture need to be convicted for the compensation to be considered. Requiring the victim to seek compensation for violations of rights through a judicial process creates a heavy burden for survivors, in violation of established jurisprudence of the Committee.

C. Mr. Askarov’s Current Health Condition

53. We remain highly concerned about the risk to Mr. Askarov’s health and life should he remain in prison. As noted by the World Health Organization (WHO), persons in detention, especially persons of an older age and those with underlying health concerns, are more vulnerable to contracting the

³⁵ International Commission of Jurists, 2019, para 63.

³⁶ *Ibid.* para 127.

³⁷ Human Rights Committee, General Comment 33 (CCPR/C/GC/33), The Obligation of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 5 November 2008, para. 14.

³⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“Basic Principles on the Right to Remedy”), adopted by the UN General Assembly on 16 December 2005, Resolution 60/147, Principle 15: “[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.”

³⁹ *Ibid.*, Principle 9.

virus that causes COVID-19. According to a recent statement made by WHO, over 95% of COVID-19-related deaths occurred in those older than 60 years. Eight out of 10 deaths are occurring in individuals with at least one underlying co-morbidity, in particular those with cardiovascular diseases/hypertension and diabetes.⁴⁰ Mr. Askarov is 68 years old and suffers from poor health that has not been properly treated since his arrest, which has resulted in the exponential decline of his health. On 17 January 2020, Mr. Askarov was examined by a medical professional who noted that Mr. Askarov suffers from, among other conditions, heart disease, hypertension, respiratory issues, fever and neurological irregularities. [ANNEX-II] In addition to concern for his deteriorating health while in detention, his release is ever more necessary given that Mr. Askarov's particular conditions place him at higher risk for developing severe illness from COVID-19. The Government of Kyrgyzstan should immediately release Mr. Askarov.

IV. REQUESTS

54. In light of the submissions above, along with those made in the original *Communication*, we kindly request that the Committee consider the Views as not implemented and continue its dialogue with Kyrgyzstan.
55. We remain concerned about the ongoing denial of justice for Mr. Askarov and the risk to his health and life should he remain in prison. We respectfully request that the Committee again call upon Kyrgyzstan to immediately release Mr. Askarov, based on both of the Views of the Committee and humanitarian grounds.
56. We further request that the Committee remind Kyrgyzstan of its duty to conduct a fair trial, and in particular to ensure that the Supreme Court's upcoming review of Mr. Askarov's appeal is focused on the implementation of the Committee's decision.
57. We additionally request that the Committee continue to ask Kyrgyzstan to provide an effective remedy to Mr. Askarov. This remedy should include an impartial, effective, and thorough investigation into the circumstances of the torture of Mr. Askarov, capable of identifying and punishing those responsible. It should also include full reparation, including appropriate compensation to be paid immediately.
58. Finally, we kindly ask the Committee to remind the Government of Kyrgyzstan that in order to comply with its obligation to prevent similar violations in the future, it should also implement appropriate safeguards against torture in detention. Such safeguards should include, in particular, effective and independent oversight of police stations and other sites of pre-trial detention, improved police training and reform of performance criteria, and ensuring the independence of medical and forensic services. Furthermore, such trainings should include the rights of ethnic minorities. As the Committee on the Elimination of Racial Discrimination states stated in its general recommendation No. 31 (2005), States parties should "develop, through appropriate education programs, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to

⁴⁰ Dr Hans Henri P. Kluge, WHO Regional Director for Europe, Copenhagen, Denmark, *Statement – Older people are at highest risk from COVID-19, but all must act to prevent community spread* (2 April 2020), available at <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/statements/statement-older-people-are-at-highest-risk-from-covid-19,-but-all-must-act-to-prevent-community-spread>.

intercultural relations, for law enforcement officials”⁴¹ and also “promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice.”⁴²

59. We thank the Committee for its immediate attention to this urgent matter and remain at the Committee’s disposal for further information or questions.

12 May 2020

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⁴¹ UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the 5th to the 7th periodic reports of Kyrgyzstan, adopted by the Committee at its 82nd session, 11 February-1 March 2013 : Committee on the Elimination of Racial Discrimination*, 19 April 2013, CERD/C/KGZ/CO/5-7, available at <https://www.refworld.org/docid/51ee4d1d4.html> (accessed 11 May 2020).

⁴² *Ibid.*, para. 6.