

# Askarov v the Kyrgyz Republic

*Communication to the  
United Nations Human Rights Committee*

**November 2012**



**OPEN SOCIETY**  
JUSTICE INITIATIVE



**Communication to the United Nations Human Rights Committee**

**In the case of**

**Azimjan Askarov**

**against**

**the Kyrgyz Republic**

*submitted for consideration under the Optional Protocol to the  
International Covenant on Civil and Political Rights*

to

The United Nations Human Rights Committee

c/o Petitions Team

Office of the High Commissioner for Human Rights United Nations Office at Geneva  
1211 Geneva 10  
Switzerland



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## **II. LEGAL REPRESENTATIVES OF THE AUTHOR**

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## **III. STATE PARTY**

3. This communication is submitted against the Kyrgyz Republic, which acceded to the International Covenant on Civil and Political Rights and its Optional Protocol on 7 October 1994.

## **IV. SUMMARY OF THE CLAIM**

4. Azimjan Askarov, a prominent human rights defender and ethnic Uzbek, was detained in the aftermath of ethnic violence that shook southern Kyrgyzstan in June 2010. He was accused of responsibility for the death of a police officer and was taken to the same station where the officer had worked, where he was repeatedly beaten, interrogated, and taunted due to his ethnicity and human rights work. For five days he was denied access to a lawyer, and subsequently his lawyer was attacked twice when he attempted to visit. The trial of Mr. Askarov, and his seven co-defendants, was flagrantly unfair: relatives of the deceased police officer filled the courtroom, shouted abuse at the defence lawyers, physically attacked the defendants, and threatened any potential defence witnesses who attempted to testify. The defendants were also beaten by police in breaks during the hearing. After Mr. Askarov was convicted and sentenced to life imprisonment, his appeal hearings were marred by similar violations and the sentence upheld. A further appeal to the Supreme Court failed to remedy any of these defects. As a result, Mr. Askarov remains in prison, where he is denied medical treatment for the effects of the repeated torture and other potentially life-threatening medical conditions.

### **Summary of the facts**

5. Mr. Askarov, an ethnic Uzbek, is a prominent human rights defender in Kyrgyzstan, who for more than 10 years has documented and exposed human rights violations by the police and prison authorities in his home town of Bazar-Korgon and other parts of the Jalal-Abad province. On 15 June 2010, he was detained in the aftermath of ethnic violence in southern Kyrgyzstan. He was accused of numerous crimes, including complicity in the murder of a police officer on the morning of 13 June, and was detained at the same police station where the deceased officer had worked.
6. At the police station, Mr. Askarov was repeatedly beaten during his first four days of detention, and the police humiliated him and referred to his human rights work, with statements such as “Because of the articles criticizing us, we will get even with you. We will make you die slowly. Now we have the opportunity and the time to punish you” and “Now it is your turn to serve us.” He was denied access to a lawyer and was interrogated at least 11 times as the police attempted to coerce him into testifying against leaders of the Uzbek community. At one point, he was repeatedly hit on the head with a pistol and forced to clean up his own blood. The police also threatened to rape his wife and daughter in front of him. His detention was not registered for nearly 24 hours, even though Article 95 of the Kyrgyz Criminal Procedure Code mandates registration within three hours of detention. On the third day of interrogation, the local prosecutor criticized the police for the fact that they still had not obtained the information that she said she needed. Later that day, on 17 June, the prosecutor filed criminal charges against Mr. Askarov, alleging that he had instigated ethnic hatred, had incited disorder, and had incited the crowd to attack the police officer. The court ordered Mr. Askarov’s detention pending trial at a hearing at which both the judge and prosecutor declared that his guilt was proven. Ultimately, seven other ethnic Uzbeks from Bazar-Korgon were also detained and charged with participating in the disorder, the death of the police officer, or both.
7. Mr. Askarov continued to be detained by the police in the deceased officer’s police station for two months. He had no access to a lawyer until a colleague visited him a week after he was detained and discovered that he was being tortured. Even once a prominent human rights lawyer from Bishkek, Nurbek Toktakunov, joined the defence team, the police and prosecutor refused to allow him to meet Mr. Askarov in private and withheld information necessary to prepare his defence. On several occasions, relatives of the dead police officer physically attacked Mr. Toktakunov on the grounds of the police station and the prosecutor’s office while the police and local prosecutors refused to intervene. The police terminated one of Mr. Toktakunov’s only private meetings with Mr. Askarov after ten minutes, and throughout the entirety of the two-month investigation they had less than two hours together to discuss the case.
8. The District Court trial of Mr. Askarov and his seven co-defendants, which commenced on 2 September 2010, was flagrantly unfair and amounted to a denial of justice. Mr. Toktakunov was not able to participate in the first day of the trial because he was only notified of the hearing the night before it commenced, despite living 10 hours drive away. Mr. Askarov pleaded not guilty to all charges, as he had been at home when the policeman was killed, but the court did not permit Mr. Askarov’s lawyers to present evidence that substantiated these claims. Relatives of the deceased police officer constantly threatened and intimidated Mr. Askarov’s defence team, his seven co-defendants, and potential witnesses inside and outside the courtroom. The trial judge made no effort to protect defence counsel or maintain order in the courtroom. The atmosphere of intimidation in the courtroom prevented defence counsel from making legal applications, calling defence witnesses, or cross-examining prosecution witnesses.

9. Mr. Askarov and his co-defendants were also beaten during the trial. After the first hearing, police opened the cage in which they were held and beat them in the courtroom. Later that evening, twenty police officers beat Mr. Askarov and the other defendants, who were handcuffed and unable to protect themselves, for several hours in the backyard of the police station where they were held during the trial. While beating them, the officers told them they must remain quiet and only give “yes” and “no” answers at the court room.
10. Without considering any defence evidence, the District Court held the last hearing on 8 September, and on 15 September 2010 found Mr. Askarov guilty of instigating ethnic hatred, inciting disorder, and complicity in the murder of the police officer, as well as attempted murder of other officers, calling for the mayor to be taken hostage the day before, and possession of 10 rounds of ammunition. The Court sentenced Mr. Askarov to life imprisonment. It also convicted all seven of his co-defendants, sentencing four to life imprisonment and the other three to prison terms of between nine and 20 years.
11. Lawyers for Mr. Askarov and his co-defendants appealed the convictions to the Jalal-Abad Regional Court, and on 9 October 2010, Mr. Askarov and his co-defendants were transferred to Suzak police station in preparation for the appeal hearings. On arrival at the station, they were taken to the backyard, forced to remove their clothing, and beaten by police officers wearing black masks who told Mr. Askarov “if you did not write against the police ... we would not be beating you”. On 23 October, the location of the appeal was changed to the courthouse in Tash-Kumyr village, and upon arrival at the police station there, Mr. Askarov’s medication was confiscated and his co-defendants were again stripped and beaten by masked police officers. After one day of hearings in Tash-Kumyr, the location was again changed, to the courthouse in Nooken village.
12. The appeal hearings before the Jalal-Abad Regional Court in both Tash-Kumyr and Nooken were characterized by violations similar to those at the trial. Relatives of the deceased officer shouted at and threatened the defence lawyers during the hearings. They also threatened potential defence witnesses, and even the police advised potential witnesses not to attend the hearing. As a result, the defence lawyers were again unable to call and examine witnesses. On 10 November 2010, the Appeal Court rejected the appeals and upheld the convictions and sentences issued by the trial court. Mr. Askarov was moved on 11 November to Jalal-Abad police detention center where he was kicked in the chest and further humiliated by being stripped and called derogatory terms for Uzbeks. By the time he was finally transferred out of police custody to a prison in Bishkek on 12 November 2010, his health was in critical condition.
13. Lawyers for Mr. Askarov and his co-defendants again appealed to the Supreme Court of the Kyrgyz Republic, where defence lawyers were able to file for the first time the witness statements that substantiated Mr. Askarov’s version of events and served as evidence of his innocence. This included 14 witness statements that Mr. Askarov was at home on the morning of 13 June when the policeman was killed. However, Mr. Askarov was not allowed to participate at this first hearing of his case which was held in relative safety and was not dominated by relatives and supporters of the deceased police officer. Despite accepting the applications of the defence and the witness statements, the Supreme Court apparently did not take this evidence into account. In its written decision, on 20 December 2011, the Court did not refer to the new witness statements, summarily dismissed other arguments of the defence as “not corresponding to the case file”, and declined to order any investigation into the torture allegations. It upheld the verdict and sentence against Mr. Askarov and six of his co-defendants (the Court overturned the conviction on one charge against the seventh co-defendant, and reduced her sentence from 20 to 11 years imprisonment).

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

#### **Summary of domestic remedies exhausted**

15. Mr. Askarov has exhausted all available domestic remedies. During and after Mr. Askarov's conviction, his lawyer repeatedly complained of his torture before the Bazar-Korgon District Court, the Appeal Court and the Supreme Court. He also filed several requests with the prosecutor's office to investigate Mr. Askarov's allegations of torture, and Mr. Askarov furthermore complained of his torture to the Kyrgyz Ombudsman's office. However, no criminal investigation took place. In denying the requests to investigate, the authorities repeatedly referred to two statements by Mr. Askarov while in police custody that he had no complaints – statements made as a result of threats of further torture. To this day, the prosecutors continue to ignore all evidence provided by Mr. Askarov and his lawyer about the torture he endured, including multiple detailed and consistent accounts of his mistreatment set out in legal documents, statements, details provided to the Kyrgyz Ombudsman, interviews with media and non-governmental organizations, and medical records including the two evaluations by Dr. Crosby.

#### **Violations of the ICCPR**

16. The Kyrgyz Republic has violated the ICCPR as follows:
  - A. *Torture*. The treatment inflicted upon Mr. Askarov by police officers in custody, for the purpose of obtaining a false confession, for the purpose of discrimination on the grounds of Mr. Askarov's ethnic origin, and as punishment for reporting police abuse, amounts to torture in violation of Article 7 of the ICCPR. This torture was exacerbated by the conditions in which Mr. Askarov was detained and the failure to provide medical treatment, in further violation of Article 7.
  - B. *Lack of Safeguards*. The Kyrgyz Republic failed to take measures to protect Mr. Askarov from torture, in violation of Article 7 of the ICCPR in conjunction with Article 2(3).
  - C. *Failure to Conduct an Effective Investigation*. The Kyrgyz Republic failed to conduct an impartial, effective and thorough investigation into the repeated torture of Mr. Askarov, in violation of Article 7 of the ICCPR in conjunction with Article 2(3).
  - D. *Failure to Provide Redress*. The Kyrgyz Republic failed to provide access to effective remedies for the torture of Mr. Askarov, including compensation and rehabilitation, in further violation of Article 7 in conjunction with Article 2(3).
  - E. *Arbitrary and Unlawful Detention*. Mr. Askarov's detention was not in accordance with domestic law, had no legitimate purpose, and was motivated by his role as a human rights defender and his ethnicity. It was therefore unlawful and arbitrary in violation of Article 9 of the ICCPR, as well as the prohibition against discrimination in Articles 2 and 26.

- F. *Inhumane Conditions of Detention.* The conditions in which Mr. Askarov was detained, in particular at Bazar-Korgon police station, were inhumane, in violation of Article 10 of the ICCPR.
- G. *Violation of Pre-Trial Rights.* Mr. Askarov was denied adequate time and facilities to prepare his defence, particularly the ability to communicate with his counsel, and public officials violated the presumption of innocence by making statements that he was guilty, in contravention of Article 14 of the ICCPR.
- H. *Violation of Fair Trial Rights.* The lack of independence and impartiality in Mr. Askarov's trial and subsequent appeal process and the atmosphere of intimidation both at trial and on appeal violated his rights to a fair hearing. He was unable to effectively call or cross-examine witnesses, and was not present at the first potentially meaningful review of his conviction by the Supreme Court, in further violation of Article 14 of the ICCPR.
- I. *Violation of Mr. Askarov's Rights as a Human Rights Defender.* The authorities detained and tortured Mr. Askarov, and denied him a fair trial, in large part because of his work as a human rights defender in the Kyrgyz Republic, in violation of Articles 9 and 19 of the ICCPR.

## V. FACTS OF THE CLAIM

### Background: Azimjan Askarov

- 17. Azimjan Askarov was born on 17 May 1951 in Bazar-Korgon, in the Jalal-Abad oblast (province) of the Kyrgyz Republic.
- 18. Mr. Askarov, an ethnic Uzbek, is the director of the human rights organization *Vozdukh* (Air), based in southern Kyrgyzstan, and a well-known local human rights defender. For more than ten years, Mr. Askarov has focused on documenting prison conditions and police ill-treatment of detainees in Bazar-Korgon and other parts of the Jalal-Abad province.<sup>1</sup>
- 19. In 2001, Mr. Askarov was the first human rights defender in Kyrgyzstan to receive permission from state authorities to monitor places of detention. That year, he reported the beating of 53 detainees by more than 30 special forces officers as a punishment for praying in their cell. As a result of Mr. Askarov's advocacy, including making a television documentary, four officers were prosecuted.<sup>2</sup>
- 20. Since that time, he has been involved in documenting and publicising numerous instances of police abuse and misconduct in the Kyrgyz Republic, including writing critical media articles on such cases. For example, in March 2003, he documented and publicised the abuse of Ms. Zulhumor Tokhtonozarova and three other women who were held in pretrial detention at the Bazar-Korgon police station for seven months. During that time, Ms. Tokhtonozarova, then 23 years old, was abused and raped by police officers, and sold by

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<sup>1</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 3-6. See further, e.g. Human Rights Watch, "Kyrgyzstan: Free Human Rights Defender, Ensure Fair Retrial", 15 September 2010, available at <http://www.hrw.org/news/2010/09/15/kyrgyzstan-free-human-rights-defender-ensure-fair-retrial>; Rayhan Demytrie, "Kyrgyzstan violence: Police accused of ethnic bias", *BBC News*, 19 February 2011, available at <http://www.bbc.co.uk/news/world-asia-pacific-12485732>; and Observatory for the Protection of Human Rights Defenders, "New Information – Judicial Harassment – Kyrgyzstan", 31 January 2011, available at <http://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2011/01/d21060/>.

<sup>2</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 4.

them as a sexual slave to other detainees. Mr. Askarov revealed this story to the public and complained to various state authorities on Ms. Tokhtonozarova's behalf. As a result of his reporting, Ms. Tokhtonozarova was released, two investigators were fired and four police officers were criminally prosecuted.<sup>3</sup>

21. In another case, in 2006 Mr. Askarov defended two residents of Bazar-Korgon who had been accused of murder by bringing to the courtroom the woman that the police claimed had been murdered, Mairam Zahirova, just as the trial was about to start. One of the two defendants had previously confessed to the supposed murder after being tortured by the police. The press reported that several prosecutors were later fired for incompetence.<sup>4</sup> Mr. Askarov was also the first human rights defender to bring to light the case of Tashkenbai Moidunov, an ethnic Kyrgyz from Bazar-Korgon, who was arbitrarily killed by Bazar-Korgon police in 2004. The UN Human Rights Committee recently rendered its decision on this case, finding violations of the right to life and failure to investigate.<sup>5</sup>
22. Mr. Askarov's role as a human rights defender, and the link between this work and the persecution and mistreatment that forms the basis of this communication, is widely recognized (see para. 184, below). The police in Bazar-Korgon did not hide their contempt for Mr. Askarov: one of the policemen who was a witness at his trial told a journalist that Mr. Askarov "had always looked for conflicts with the police" and spontaneously brought up the case of Ms. Toktonazarova, stating that Mr. Askarov had "exaggerated the case to make the police look bad".<sup>6</sup> The former President of Kyrgyzstan, Roza Otunbaeva, also acknowledged the link and the "controversial" nature of the case, observing that

"all the testimony came from [the murdered policeman's] colleagues. There's a sense of solidarity here, absolutely. He [Mr. Askarov] was a human-rights defender, he annoyed the policemen, the local authorities. Perhaps there's an element of revenge on their part."<sup>7</sup>
23. In March 2011, the Czech human rights organization People in Need awarded Mr. Askarov the Homo Homini Award, based on his perseverance "despite threats, detention and imprisonment along with physical abuse" and "his long-term and dangerous work in human rights promotion".<sup>8</sup> On 13 September 2012, the Committee to Protect Journalists awarded

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<sup>3</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 5. See also Philip Shishkin, *A Murder in Kyrgyzstan*, 10 June 2011, page 4, available at <http://asiasociety.org/countries/conflicts/murder-kyrgyzstan>; Ulugbek Babakulov, "Police officers get even with activist who incriminated them in sadism", *MK-Kyrgyzstan*, 8 July 2010, available at [http://www.mk.kg/index.php?option=com\\_content&view=article&id=3119:-&catid=3:-&Itemid=35](http://www.mk.kg/index.php?option=com_content&view=article&id=3119:-&catid=3:-&Itemid=35); Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 3, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>4</sup> See Philip Shishkin, *A Murder in Kyrgyzstan*, 10 June 2011, p. 5; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 3.

<sup>5</sup> See Valentina Galich, "Abdumalik Sharipov: Main difficulty in torture cases is that high authorities don't have a political will", *Voice of Freedom*, 28 October 2011, available at <http://vof.kg/?p=4150>; *Moidunov v. Kyrgyzstan*, UNHRC, Views of 24 August 2011, UN Doc. CCPR/C/102/D/1756/2008.

<sup>6</sup> Philip Shishkin, *A Murder in Kyrgyzstan*, 10 June 2011, page 4.

<sup>7</sup> Philip Shishkin, *A Murder in Kyrgyzstan*, 10 June 2011, page 9.

<sup>8</sup> Exhibit 89: People In Need "The 2010 Homo Homini Award Goes Out to Askarov", March 2011, available at <http://www.clovektisni.cz/index2en.php?id=548&idArt=1942>

Mr. Askarov their 2012 Press Freedom Award, as one of four journalists who had “risked their lives and liberty to reveal abuses of power and human rights violations”.<sup>9</sup>

### **Violent events of 10-14 June 2010 in Southern Kyrgyzstan**

24. In 2010, Kyrgyzstan experienced its worst violence since gaining independence in 1991.<sup>10</sup> Between 10 and 14 June 2010, violence between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan killed hundreds, injured thousands, destroyed more than 2,600 homes and caused the temporary mass exodus to Uzbekistan of nearly 100,000 ethnic Uzbeks from Kyrgyzstan’s southern provinces.<sup>11</sup> A further 300,000 were internally displaced.<sup>12</sup>
25. On 12 June 2010, there were repeated rumors in Bazar-Korgon that groups of people, apparently of Kyrgyz ethnic origin, were coming to attack the ethnic Uzbek population in the province.<sup>13</sup> As a result, approximately three-quarters of the women and children were evacuated, many fleeing to the Pahta-Abad district, just across the border in Uzbekistan, 20 kilometers away from Bazar-Korgon.<sup>14</sup>
26. Approximately 400 to 500 ethnic Uzbeks gathered on the Kyrgyzstan side of the border with Uzbekistan, near the village of Chek in Bazar-Korgon district.<sup>15</sup> Mr. Askarov was among this crowd, as he had gone to take his mother, his daughter and his two grandchildren to safety in Uzbekistan.<sup>16</sup> At around 4:00 pm the Akim (mayor) of Bazar-Korgon province, Kyrgyzstan, Mr. Kubatbek Artykov, an ethnic Kyrgyz, approached the crowd and asked Mr. Askarov to encourage people to return to their homes. Mr. Askarov asked the Akim to guarantee the safety of the people, but the Akim refused. Mr. Askarov therefore declined to call the people back to their homes. He helped his family members cross the border into Uzbekistan and then returned to Bazar-Korgon in order to monitor events as an independent observer. Imam Tojidin Kori and several border guards allegedly witnessed the conversation of Mr. Askarov and the Akim.<sup>17</sup>
27. At 9:00 pm that evening, Mr. Askarov observed a gathering of the Uzbek community on Saidulaeva Street in Bazar-Korgon village. Upon the request of Uzbek community leaders to monitor the events, including by videotaping, he stayed in the area until 5:00 am awaiting a possible attack, and then went to his home in the village of Bazar-Korgon to

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<sup>9</sup> Exhibit 90: Committee to Protect Journalists, “International Press Freedom Awards: Honoring tenacity and courage”, 13 September 2012, available at <http://cpj.org/awards/2012/honoring-tenacity-and-courage.php>

<sup>10</sup> See UNHCHR, *Report on technical assistance and cooperation on human rights for Kyrgyzstan*, UN Doc. UNGA/HRC/17/41, 1 April 2011; and Human Rights Watch, “*Where is the Justice?*” *Interethnic Violence in Southern Kyrgyzstan and its Aftermath*, 16 August 2010, available at <http://www.hrw.org/en/reports/2010/08/16/where-justice-0>.

<sup>11</sup> Human Rights Watch, *World Report 2011*, at 449.

<sup>12</sup> Exhibit 76: Kyrgyzstan Inquiry Commission, “Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010”, May 2011, at ii (“Report of the Kyrgyzstan Independent Commission of Inquiry”).

<sup>13</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 8.

<sup>14</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para 181; Exhibit 49: Collective letter from residents of Bazar-Korgon village to the Supreme Court, January 2011; Exhibit 79: International Commission of Jurists, “Report on the Arrest, Detention and Trial of Azimzhan Askarov”, September 2012, para. 20 (“ICJ Report”) available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/09/Askarov-Report-2012-Eng-004.pdf>.

<sup>15</sup> See Exhibit 1: Map of Jalal-Abad Oblast.

<sup>16</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 9-10; Exhibit 79: ICJ Report, para. 20.

<sup>17</sup> Exhibit 79: ICJ Report, paras. 21, 23.

sleep.<sup>18</sup> According to the International Commission of Jurists (ICJ), his return home at around this time was confirmed by numerous witness reports.<sup>19</sup>

### **Violence and Killing of Police Officer in Bazar-Korgon village (13 June 2010)**

28. Given that violent clashes were happening in other cities in the south of Kyrgyzstan and the rumours that the ethnic Uzbek population of Bazar-Korgon was going to be targeted, a number of individuals, mostly ethnic Uzbeks gathered just outside Bazar-Korgon village, on a bridge on the main highway through Jalal-Abad oblast, to await the possible attack. Some were armed with home-made weapons, in an effort to defend their village.
29. At around 8:00 am on 13 June 2010, 16 ethnic Kyrgyz police officers arrived, allegedly to try and convince the crowd to leave the bridge and allow free passage on the highway that crossed it.<sup>20</sup> According to the police account of events, there was a confrontation and at approximately 8:30 am, when some people from the crowd beat and stabbed to death one police officer, Mr. Sulaimanov Myktybek, and burned his body with a Molotov cocktail. Some of the other officers also received injuries as they fled.<sup>21</sup> However, as the ICJ observed, “Neither the case materials nor the court decisions provide for an accurate determination of the sequence and the details of events at the bridge on that day.”<sup>22</sup>
30. On 13 June 2010, violence indeed spread to various regions of Jalal-Abad oblast,<sup>23</sup> including Bazar-Korgon village where around 20 people were killed, more than 50 were wounded by gunfire and 205 houses were burnt down.<sup>24</sup> Mr. Askarov’s office was amongst the buildings that were destroyed.<sup>25</sup>
31. Mr. Askarov was at his house on 13 June 2010, rather than at the bridge, and did not participate in the killing. His wife Khadicha and neighbors informed him about the death of the police officer that morning.<sup>26</sup> Later that day Mr. Askarov went to check on the extent of the violence in the Bazar-Korgon neighborhood. There, a man standing close to him was killed,<sup>27</sup> shot by a police officer.<sup>28</sup> Mr. Askarov took the man to hospital where he was pronounced dead, and then went to his office to get his video camera in order to identify the deceased as well as to document the arson, looting and other violence in Bazar-Korgon.<sup>29</sup> Around the time that he returned to his house, shooting erupted in the center of Bazar-Korgon.<sup>30</sup> Throughout the day, Mr. Askarov received phone calls from the Organization for

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<sup>18</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 11-12.

<sup>19</sup> Exhibit 79: ICJ Report, para. 27.

<sup>20</sup> Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>21</sup> Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>22</sup> Exhibit 79: ICJ Report, para. 31.

<sup>23</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, paras. 178-189.

<sup>24</sup> Exhibit 49: Collective letter from residents of Bazar-Korgon village to the Supreme Court, January 2011; Exhibit 79: ICJ Report, para. 31.

<sup>25</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 17.

<sup>26</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 12; Exhibit 14: Record of questioning as suspect, 16 June 2010; Exhibit 79: ICJ Report, para. 36; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 1, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>27</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 13.

<sup>28</sup> Exhibit 79: ICJ report, para. 36, citing Askarov’s appeal to the President Atambaev; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 2, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>29</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 13.

<sup>30</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 13-14.

Security and Co-operation in Europe (OSCE) and human rights colleagues, whom he informed that he was not on the bridge and could not comment on the events.<sup>31</sup> The next day, 14 June 2010, Mr. Askarov stayed at home.<sup>32</sup>

### **Detention, Torture and Interrogation of Mr. Askarov**

#### Detention and Beating of Mr. Askarov (15 June 2010)

32. On the day that the police officer was killed, a criminal investigation into his killing was initiated by the Bazar-Korgon prosecutor's office.<sup>33</sup> The following day, 14 June 2010, Deputy district prosecutor Ms. Zhamila Turajanova was assigned to lead the investigation.<sup>34</sup>
33. On 15 June 2010, Mr. Askarov left his house and continued to monitor the violence and destruction in his village, collecting information to document the number of victims and burnt houses in Bazar-Korgon village, most of which belonged to Uzbek families.<sup>35</sup> At some point that morning he called Ms. Valentina Gritsenko, the head of the human rights organization *Spravedlivost*, while he was filming the violence.<sup>36</sup> He also encountered a local judge, who warned him to stop gathering information on the impact of the violence, accusing Mr. Askarov of wanting to "sell these materials for US dollars" and claiming that "this information is a state secret and nobody should learn about it".<sup>37</sup>
34. At around 11:00 am, Mr. Askarov was standing near his destroyed office when two men approached him in a car. One of them was Mr. Bakhtiar Karimov, a police officer from the investigation department of the Bazar-Korgon police station. They asked Mr. Askarov to come with them for a discussion with the chief of the Bazar-Korgon police station, and he went with them.<sup>38</sup>
35. At the police station, the deputy head of operations at the station, an officer named Azizbek, asked Mr. Askarov about a number of leaders of the Uzbek community and who of them distributed the weapons.<sup>39</sup> Mr. Askarov replied that he did not know anything about this, and after about 30 minutes of questioning Azizbek said that he "wanted to do it in a better way", but apparently Mr. Askarov "did not want to" or "did not understand this".<sup>40</sup> Azizbek then handed Mr. Askarov over to police officers at the station.<sup>41</sup> Mr.

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<sup>31</sup> These colleagues included Sardar Bagishbekov, the executive director of *Voice of Freedom* (a Kyrgyz NGO), and Mrs. Aziza Abdirasulova, the head of a Kyrgyz human rights organization *Kylym-Shamy*: Statement of Azimjan Askarov, para. 15.

<sup>32</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 16.

<sup>33</sup> Exhibit 11: Decision to initiate criminal proceedings, 13 June 2010.

<sup>34</sup> Exhibit 12: Decision to compose investigation group, 14 June 2010.

<sup>35</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 17; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>36</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 18.

<sup>37</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 5, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 13.

<sup>38</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 18-19; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Exhibit 79: ICJ report, para. 38.

<sup>39</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 19; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Exhibit 79: ICJ Report, para. 38; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 5.

<sup>40</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 19-20; Exhibit 79: ICJ Report, para. 38.

<sup>41</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 20; Exhibit 79: ICJ Report, para. 38; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

Akarov's detention was not registered at this time, and would not be for almost 24 hours, although news of his detention was reported that day by several local news agencies.<sup>42</sup> He also was not informed of his rights or his procedural status.

36. The police officers took Mr. Askarov to the back yard of the station where he was humiliated and beaten. First, he was given a bag to collect bottles and cigarette butts from the ground. He was forced to approach smoking police officers and collect their cigarette butts. Approximately seven police officers were present, who laughed at him and videotaped him on their phones. They said "now, your turn has come to serve us".<sup>43</sup> One of the police officers, Magaev, allowed his 10 year old son to kick Mr. Askarov from behind, make fun of him, and give him orders.<sup>44</sup>
37. Mr. Askarov was then beaten by a group of four of the police officers, including the head of the temporary detention centre of the police station (IVS).<sup>45</sup> The officers kicked him – Mr. Askarov recalled "they were beating me with hands and legs; it seemed like they were kicking a football"<sup>46</sup> – and when he fell down one stepped on his neck and others continued to strike him all over his body. At one point during the beatings, Mr. Askarov lost consciousness. Eventually, blood was frothing at his mouth, and someone screamed "stop, you will kill him!"<sup>47</sup> He was repeatedly kicked in the groin and beaten with rifle butts in the torso.<sup>48</sup> The officers then made Mr. Askarov sing the national anthem. The head of the temporary detention center of the police station told him that "Because of the articles criticizing us, we will get even with you. We will make you die slowly ... Now we have the opportunity and the time to punish you. Anyway we will kill you but slowly".<sup>49</sup>
38. After the beatings, Mr. Askarov was again questioned. This questioning was recorded, and although he was designated as a witness rather than a suspect, he was questioned about his presence on the bridge when the police officer was killed. As a witness, he was warned of the criminal liability for making false testimonies, but was not provided with a lawyer. According to the record of questioning, this interrogation lasted from 4:45 to 7:15 pm.<sup>50</sup>
39. In the evening Mr. Askarov was placed in a temporary detention cell located in the basement of the police station. His younger brother, Mr. Hakimjan Askarov, was also in the cell: he had come to search for Mr. Askarov and had been detained by the police. Each

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<sup>42</sup> See Voice of Freedom, "In Jalal-Abad oblast a human rights defender and a newspaper editor are arrested", 15 June 2010, available at <http://vof.kg/?p=1683>; Fergananeews.com: "Kyrgyzstan: Authorities in the South are not looking for extremists but blocking civil activists and public figures", 15 June 2010, available at <http://www.fergananeews.com/news.php?id=14993>.

<sup>43</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 21; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>44</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 21; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>45</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 22; Exhibit 79: ICJ Report, para. 39.

<sup>46</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 22; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 2, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>47</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 22; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; see also Exhibit 79: ICJ Report, para. 40.

<sup>48</sup> Exhibit 79: ICJ Report, para. 40.

<sup>49</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 22; see also Exhibit 79: ICJ Report, para. 40.

<sup>50</sup> Exhibit 13: Record of questioning as a witness, 15 June 2010; see also Exhibit 79: ICJ Report, para. 41.

officer who passed the cell would kick Mr. Askarov or strike him in his chest.<sup>51</sup> Once the police officers learned that Hakimjan was Mr. Askarov's brother, they began to beat him as well, repeatedly asking for the location of Mr. Askarov's camera.<sup>52</sup> Mr. Askarov told his brother that he wanted a normal funeral in the event that he was killed in custody.<sup>53</sup>

40. Later that evening, a group of police officers attempted to take Mr. Askarov from his cell and out into the yard of the police station. However, the deputy head of operations who had questioned him on his arrival, Azizbek, stopped them and took Mr. Askarov to his office where he remained until 4:00 am the following morning.<sup>54</sup> Azizbek told Mr. Askarov that he knew he was not guilty but suggested cooperating with him by identifying ethnic Uzbeks who had allegedly distributed guns. Mr. Askarov refused on the basis that he had not seen what had gone on.<sup>55</sup>
41. Throughout his time in the office, Mr. Askarov heard repeated screams from the yard.<sup>56</sup> At 4:00 am, when Mr. Askarov was brought back to the cell, he saw his brother and three other people in a horrifying condition. His brother told Mr. Askarov that they were severely beaten outside. One man's face was unrecognizable from the beatings and Hakimjan could not stand or sit up properly.<sup>57</sup> His brother continued to be detained without any charges and was repeatedly beaten, including with rifle butts, for two more days.<sup>58</sup>

#### Interrogation and further torture of Mr. Askarov (16-17 June 2010)

42. A few hours after he was returned to the cell, at approximately 9:00 am on 16 June 2010, police officers again interrogated Mr. Askarov.<sup>59</sup> They had a piece of paper listing names of leaders of the Uzbek community and again asked Mr. Askarov to testify against them regarding distribution of weapons.<sup>60</sup> When Mr. Askarov refused to do so, the officer on duty threatened him and said that they would bring his wife and daughter to the station and would rape them in front of him until he agreed.<sup>61</sup> A group of officers then left the station, apparently to look for Mr. Askarov's wife and daughter, but returned without them as they had already been taken to Uzbekistan.<sup>62</sup>
43. During this interrogation, the police resumed beating Mr. Askarov. Three officers participated, including the driver of the head of police of Bazar-Korgon who delivered particularly vicious blows. One officer repeatedly struck Mr. Askarov's head with the handle of his pistol, until he was bleeding from the head. At this point the police became

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<sup>51</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 23; see also ICJ Report, para. 41.

<sup>52</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, para. 6.

<sup>53</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 23 and 25.

<sup>54</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 24-25.

<sup>55</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 24.

<sup>56</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 24.

<sup>57</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 25.

<sup>58</sup> Exhibit 38: Petition of H. Askarov and T. Askarova to "Voice of Freedom", 27 July 2010; Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, para. 6.

<sup>59</sup> Exhibit 14: Record of questioning as a suspect, 16 June 2010; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 26.

<sup>60</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 26.

<sup>61</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 26.

<sup>62</sup> As noted above, Mr. Askarov took his daughter to safety in Uzbekistan on 12 June 2010, after hearing the rumors that the Uzbek community in Bazar Korgon may be attacked (see para. 25, above). Mr. Askarov's wife stayed in Bazar-Korgon at that point, but was taken by relatives to Uzbekistan after his arrest (ICJ report, para. 43; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 5, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>).

worried, told Mr. Askarov to stop the bleeding, and forced him to clean up the spilt blood from the floor with his shirt.<sup>63</sup> The officers then put a plastic bag over Mr. Askarov's head and one proposed putting chlorine in it,<sup>64</sup> apparently to poison Mr. Askarov with the fumes,<sup>65</sup> but another officer, Bakhtiar Karimov, took the plastic bag off.<sup>66</sup> As a result of these beatings Mr. Askarov's left eye was damaged, and he still does not see well from it.<sup>67</sup>

44. Prosecutor Turajanova came to see Mr. Askarov on the afternoon of 16 June. She showed him a copy of the Criminal Procedure Code, and told him that although he had referred to this code in the past when he was complaining about police conduct, "in this building, another Criminal Procedure Code is valid against you".<sup>68</sup>
45. At some point on 16 June, Mr. Askarov's detention was officially registered for the first time – it is unclear whether this took place in the morning, afternoon or evening.<sup>69</sup> Again, Mr. Askarov was neither informed of his rights as a suspect nor provided with a lawyer, although he asked for one.<sup>70</sup>
46. During the course of 16 June, prosecutor Turajanova conducted confrontations between Mr. Askarov and police officers who were present during the violence on 13 June in Bazar-Korgon village.<sup>71</sup> According to the police records, which may not be accurate, these confrontations lasted for approximately four and a half hours and did not end until 6:40 pm that evening.<sup>72</sup> At no point during any of the interrogations or confrontations did Mr. Askarov have a lawyer present, despite his request for one.<sup>73</sup> During the confrontations, the police officers gave various accounts: some claim that Mr. Askarov shouted to take the police chief hostage and kill the other officers;<sup>74</sup> one claims to have seen Mr. Askarov at the bridge, walking and screaming, but that someone else ordered that the police chief be taken hostage;<sup>75</sup> another could not hear what Mr. Askarov said;<sup>76</sup> yet another claims that Mr. Askarov shouted "kill the Kyrgyz dogs";<sup>77</sup> and one claims that Mr. Askarov was

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<sup>63</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 28; see also Exhibit 79: ICJ Report, para. 43.

<sup>64</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 28.

<sup>65</sup> Exhibit 79: ICJ Report, para. 43.

<sup>66</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 28; Exhibit 79: ICJ Report, para. 43.

<sup>67</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 94.

<sup>68</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 29; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>69</sup> According to Exhibit 22: Record of Detention as Suspect, 16 June 2010, the registration took place between 9:00am and 9:30am; Mr. Askarov states that it took place later in the afternoon of June 16 (Statement of Azimjan Askarov, para. 29); and the International Commission of Jurists concluded that the registration took place in the evening (ICJ Report, para. 44).

<sup>70</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 29; Exhibit 79: ICJ Report, para. 45.

<sup>71</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at para. 30.

<sup>72</sup> For example, the records indicate that the confrontation with Abdazov took place from 12:00 to 1:00pm, and the confrontation with Dosov took place from 12:35 to 1:00pm; and the record of confrontation with Tairov claims that it took place from 9:00 to 9:30, at the same time as the registration as a suspect (9:00 to 9:30) and the questioning as a suspect (9:20 to 9:40).

<sup>73</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 29.

<sup>74</sup> Exhibit 15: Record of Confrontation with Mageev, 16 June 2010; Exhibit 16: Record of Confrontation with Dosov; 16 June 2010; Exhibit 17: Record of Confrontation with Umarahunov, 16 June 2010.

<sup>75</sup> Exhibit 18: Record of Confrontation with Abdazov, 16 June 2010.

<sup>76</sup> Exhibit 19: Record of Confrontation with Eraliev, 16 June 2010.

<sup>77</sup> Exhibit 20: Record of Confrontation with Tairov, 16 June 2010.

simply sitting amongst the crowd.<sup>78</sup> Throughout the confrontations, Mr. Askarov consistently explained that he had not been present at the bridge when the murder of the police officer occurred.

47. On the morning of 17 June 2010, Mr. Askarov was taken by two officers to an investigator's room in the police station for further interrogation.<sup>79</sup> Again, he was not provided with a lawyer. Mr. Askarov was presented with statements to sign; however, he refused.<sup>80</sup> Throughout the interrogation, Mr. Askarov maintained that he was not guilty and did not commit any of the crimes.<sup>81</sup> Approximately three officers repeatedly struck Mr. Askarov throughout the interrogation, in particular in his kidneys.<sup>82</sup> This interrogation and beating lasted throughout the day until approximately 5:00 pm.<sup>83</sup>
48. Towards the end of the interrogation, the officers took Mr. Askarov to the prosecutor's office, where prosecutor Turajanova rebuked the detectives, saying "you kept him for 3 days and could not get what we need ... you can kill him".<sup>84</sup> The police officers thus continued to beat him, again focusing on the area around his kidneys.<sup>85</sup> As a result of this beating, Mr. Askarov still suffers pain in his kidneys and must take painkillers every day.<sup>86</sup>

Court order on detention of Mr. Askarov (17 June 2010) and illegal searches

49. At 4:30 pm on 17 June 2010, prosecutor Turajanova filed criminal charges against Mr. Askarov, namely incitement of violence and racial hatred, riot, and actions aimed at the humiliation of national dignity and honor.<sup>87</sup> After he had been formally identified as a defendant, Mr. Askarov was brought to the Bazar-Korgon District Court to determine whether he should be detained prior to trial.<sup>88</sup> He was provided with a government-appointed lawyer known as Syrga. Mr. Askarov had previously met Syrga in the context of his human rights work: in 2007, he had attempted to have Syrga's licence revoked because he had participated with investigators in beating his client.<sup>89</sup>
50. Syrga did not explain Mr. Askarov's rights to him, and did not make any arguments to the Court on Mr. Askarov's behalf. To the contrary, he accused Mr. Askarov of being disrespectful to the police and prosecutor by writing critical articles against them in the past,<sup>90</sup> and told Mr. Askarov that if he had not provided information to external sources then this would not be happening.<sup>91</sup>

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<sup>78</sup> Exhibit 21: Record of Confrontation with Abdugulov, 16 June 2010.

<sup>79</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 31.

<sup>80</sup> Exhibit 79: ICJ Report, para. 48.

<sup>81</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 32.

<sup>82</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 31-32; Exhibit 79: ICJ Report, para. 48.

<sup>83</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 31.

<sup>84</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 31; see also Exhibit 79: ICJ Report, para. 49.

<sup>85</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 32; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>86</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 32.

<sup>87</sup> Exhibit 23: Decision on Prosecution as Defendant, 17 June 2010.

<sup>88</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 33.

<sup>89</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 33; Exhibit 79: ICJ Report, para. 52.

According to the decision of the Bazar-Korgon district court on detention, Syrga's name is Mr. Myrzakulov.

<sup>90</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 34.

<sup>91</sup> Exhibit 79: ICJ Report, para. 52.

51. The closed hearing on pre-trial detention on 17 June was very brief, with the judge asking Mr. Askarov no questions and taking only five minutes to examine the case.<sup>92</sup> The court ordered that Mr. Askarov should continue to be detained pending trial, and justified its decision by stating that “if detention in custody will not be chosen as a preventive measure, [Mr. Askarov] can escape, hinder the investigation of the case and commit other grave crimes. Because of his actions police officers received bodily injuries and police captain M. Sulaimanov was killed”.<sup>93</sup> Mr. Askarov’s lawyers appealed against this decision to the Jalal-Abad Regional (Oblast) Court.<sup>94</sup> However, their appeal was rejected by the Jalal-Abad Regional Court on 24 June 2010 (see paras. 77 to 78, below).
52. Ultimately, seven other ethnic Uzbeks from Bazar-Korgon were also charged with related offences.<sup>95</sup> One had been detained around the same time as Mr. Askarov, and appeared at the pre-trial detention hearing on 17 June. Another five were detained between 23 and 30 June 2010, and the seventh was detained in early August.<sup>96</sup>
53. During the 17 June pre-trial detention hearing, Mr. Askarov and the other suspect who had been detained at that stage were held in a cage. When the judge left the courtroom to write the decision, the police officers in the courtroom took out their phones and started to video tape Mr. Askarov and the other suspect. During this time, the officers insulted, laughed at and mocked the suspects, and ordered Mr. Askarov to say bad things about the President of Uzbekistan, which he refused to do.<sup>97</sup>
54. After the pre-trial detention hearing on 17 June, the police took Mr. Askarov to his house to look for any records which he made of the aftermath of the ethnic conflict.<sup>98</sup> On the way, the vehicle stopped and Mr. Askarov was beaten.<sup>99</sup> Once they arrived at his house, the police demanded that Mr. Askarov surrender the video and camera he had used to record deaths, injuries and destruction in the village. However, the police could not find them because, as Mr. Askarov later found out, his wife had taken the cameras to his colleagues in Jalal-Abad.<sup>100</sup> According to the official record of the search and seizure, which claims that the search took place at 10:00 am on the morning of 17 June 2010, 35 video tapes were taken from his house.<sup>101</sup> Afterwards, the police returned Mr. Askarov to the Bazar-Korgon

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<sup>92</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, at paras. 34-35; Exhibit 79: ICJ Report, para. 53.

<sup>93</sup> Exhibit 25: Bazar-Korgon district court decision on detention, 17 June 2010; See also Exhibit 79: ICJ Report, para. 54.

<sup>94</sup> Exhibit 26: Appeal Complaint of Mr. Abylakimov on decision from 17 June 2010.

<sup>95</sup> Mr. Askarov was brought to trial charged with eight crimes: complicity in hostage taking, illegal acquisition and storage of firearms, acquisition and storage of extremist materials, incitement of hatred on the basis of ethnicity, organisation of mass disorder, attempt to commit murder, murder of a person in a helpless stage, and complicity in murder of a police officer. His seven co-defendants, who were charged with similar crimes, were Mr. Shukurzhan Mirzalimov (born in 1972), Ms. Minura Mamadalieva (1971), Mr. Elmurad Rasulov (1981), Mr. Dilshodbek Rozubaev (1977), Mr. Muhamadzakir Kochkarov (1987), Mr. Sanjarbek Mulavhunov (1984), Mr. Isroilbek Abduraimov (1983). See Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>96</sup> See Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>97</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 36; Exhibit 79: ICJ report, para. 53. See also video interview with Askarov as of 13 December 2010, available at <http://www.fergananews.com/article.php?id=6837>.

<sup>98</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 37.

<sup>99</sup> Exhibit 79: ICJ Report, para. 55.

<sup>100</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 37; Exhibit 79: ICJ Report, para. 55.

<sup>101</sup> Exhibit 24(b): Record of search and seizure, 17 June 2010; see also Exhibit 79: ICJ Report, para. 55.

police station where he continued to be held until the 24 June hearing of his detention appeal.

55. The next day, on 18 June, police officers conducted a further search of Mr. Askarov's house without him present and without any record, in violation of Kyrgyz law. During this search, the police took seven sacks of rice that he purchased for a wedding.<sup>102</sup> The police failed to provide any witness to the seizure of the 10 rounds of ammunition they claim was found during the search on 17 June 2010, as required by law. That ammunition, which was never subjected to any scientific testing establishing a link with Mr. Askarov, would be the only physical evidence presented against Mr. Askarov in the case.<sup>103</sup>

#### Medical examination and declaration of guilt (17 June 2010)

56. Also on 17 June 2010, prosecutor Turajanova ordered a medical examination of Mr. Askarov.<sup>104</sup> The resolution described the crime of which Mr. Askarov was accused and the examination was ordered "on the case" rather than with regard to concerns that he was being beaten,<sup>105</sup> and asked whether any injuries corresponded to the day the police officer was killed.<sup>106</sup> The medical examination was conducted by Mr. Mamatov, a forensic medical doctor in Bazar-Korgon. The examination lasted only 10 minutes, and the doctor did not ask Mr. Askarov any questions and only conducted a brief visual examination of Mr. Askarov's back.<sup>107</sup> During this examination, prosecutor Turajanova was present and sought to influence the doctor by saying that cellmate beatings had caused Mr. Askarov's injuries.<sup>108</sup> Nevertheless, the doctor did record the presence of a number of bruises which had been caused in the previous 1-2 days by the impact of solid objects or punches (see para. 166, below).<sup>109</sup>
57. Later on 17 June 2010, the prosecutor of Jalal-Abad oblast, Mr. Turdumambetov, issued a press release stating that Mr. Askarov had no bodily injuries.<sup>110</sup> A later press release claims that a medical examination took place on 16 June which found no injuries, and that the 17 June examination identified bruises on the face and on the back, injuries that were "minor, causing no health disturbance".<sup>111</sup> In the 17 June press release, the prosecutor also said that "the materials of the criminal case fully proved the guilt of Mr. Askarov ... in committing the ... crimes".<sup>112</sup>

#### **Continued detention and attacks on lawyer**

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<sup>102</sup> Exhibit 2: Statement of Azimjan Askarov, para. 37

<sup>103</sup> Exhibit 79: ICJ Report, para. 29; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 7, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>104</sup> Exhibit 67: Decision to conduct medical examination, 17 June 2010; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 48.

<sup>105</sup> Exhibit 79: ICJ Report, para. 51 (citing Decision to conduct medical examination of 17 June 2010).

<sup>106</sup> Exhibit 68: Report of medical examination conducted on 17 June 2010, 24 June 2010.

<sup>107</sup> Exhibit 74: Physicians for Human Rights Statement on Askarov Forensic Report.

<sup>108</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 48; Exhibit 79: ICJ Report, para. 51.

<sup>109</sup> Exhibit 68: Report of medical examination conducted on 17 June 2010, 24 June 2010.

<sup>110</sup> Exhibit 24(a): Press release of the Jalal-Abad oblast prosecutor's office, 18 June 2010.

<sup>111</sup> Exhibit 59: Press-release of the Prosecutor General's Office, 20 January 2011, available at [http://www.prokuror.kg/index.php?option=com\\_newscatalog&view=article&id=146&Itemid=149&lang=r](http://www.prokuror.kg/index.php?option=com_newscatalog&view=article&id=146&Itemid=149&lang=r); Exhibit 79: ICJ Report, para. 47. See also Fergana, "Kyrgyzstan: Prosecutors said rights defender A. Askarov guilty of rioting and inciting ethnic hatred with violence", 18 June 2010, available at <http://www.fergananews.com/news.php?id=15034>.

<sup>112</sup> Exhibit 24(a): Press release of the Jalal-Abad oblast prosecutor's office, 18 June 2010.

First meeting with Mr. Askarov (20 June 2010)

58. On 20 June 2010, Ms. Valentina Gritsenko, the head of the human rights organization *Spravedlivost*, and Anna Neistat, a staff member from Human Rights Watch, visited Mr. Askarov in Bazar-Korgon police station.<sup>113</sup> After a two hour wait, they were granted entry by the head of the police station, Mr. Mamyrbek Mergentaliev.<sup>114</sup> One of the police officers told Ms. Neistat that “you may believe [Mr. Askarov] is clean and innocent, but we know that he is a piece of shit”. Another officer added that Mr. Askarov should be promptly executed.<sup>115</sup>
59. Their meeting with Mr. Askarov took place in the investigation room of the temporary holding facility of the station, in the presence of approximately ten police officers. A local lawyer who Ms. Gritsenko had hired when Mr. Askarov was arrested, Mr. Abylakimov, was also present.<sup>116</sup> Ms. Gritsenko thought that Mr. Askarov looked “strange” and “somewhat stretched”, observing that he appeared extremely pale and confused; his unnatural stance suggested that his back was injured or a rib was broken.<sup>117</sup> Ms. Neistat recalled that “I almost did not recognize Askarov. Once a tall, proud, dignified man, he now could barely walk and had to lean on the table to sit down and stand up. His gaze without his glasses, which he was not allowed to keep, seemed bleary, and he grimaced with pain every time he moved.”<sup>118</sup> Although Ms. Gritsenko requested that Mr. Abylakimov see Mr. Askarov in private, the police refused to leave the room.<sup>119</sup>
60. Based on Mr. Askarov’s treatment in detention, the need for a strong independent lawyer, and concern about the authorities’ capacity to pressure Mr. Abylakimov as a local lawyer, Ms. Gritsenko asked Mr. Nurbek Toktakunov, a lawyer from Bishkek, to join Mr. Askarov’s defence team.<sup>120</sup>
61. On the afternoon of 22 June 2010, Mr. Toktakunov arrived from Bishkek to visit Mr. Askarov in detention in Bazar-Korgon. At the police station, staff told Mr. Toktakunov that he was not permitted to meet with his client unless he had obtained permission from the prosecutor.<sup>121</sup> Mr. Toktakunov accordingly asked prosecutor Turajanova for a private conversation with his client as guaranteed by the Criminal Procedure Code. Prosecutor Turajanova refused and said that the Code “does not work here”, stating that some “coordinating council” had decided that the Criminal Procedure Code “will not be applied” in Mr. Askarov’s case.<sup>122</sup> No explanation for this “coordinating council” – its basis, composition or authority – was ever provided.<sup>123</sup> Prosecutor Turajanova also refused Mr.

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<sup>113</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, para. 8; see also Exhibit 79: ICJ Report, para. 57.

<sup>114</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, para. 10.

<sup>115</sup> Human Rights Watch, “Kyrgyzstan: Ensure Safety, Due Process for Detained Activist”, 24 June 2010, available at <http://www.hrw.org/news/2010/06/23/kyrgyzstan-ensure-safety-due-process-detained-activist>.

<sup>116</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, paras. 4 and 11.

<sup>117</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, paras. 12 and 13.

<sup>118</sup> Human Rights Watch, “Kyrgyzstan’s Unjust Courtrooms”, 18 October 2010, available at <http://www.hrw.org/news/2010/10/18/kyrgyzstans-unjust-courtrooms>.

<sup>119</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, paras. 14 and 15.

<sup>120</sup> Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, paras. 4 and 18.

<sup>121</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 2-3.

<sup>122</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 4. See also Exhibit 79: ICJ Report, para. 58 (“in this case criminal procedures do not work”).

<sup>123</sup> The ICJ Report interprets this as “steering council” (para. 58), and states that it was unable to obtain a copy of any such decision (footnote 126).

Toktakunov's request to see documents relating the case against Mr. Askarov, in particular those relating to investigative actions that took place with his participation.<sup>124</sup>

62. Because Mr. Toktakunov was not permitted to meet Mr. Askarov in private, their brief meeting was held in the presence of a police officer, Mr. Kiyal Torogulov, standing within earshot.<sup>125</sup> During the meeting, Mr. Askarov appeared frightened and barely spoke to Mr. Toktakunov.<sup>126</sup> He tried to indicate to Mr. Toktakunov that he couldn't talk freely: Mr. Toktakunov scribbled "were you tortured", and Mr. Askarov replied "Yes".<sup>127</sup> Mr. Toktakunov then lifted Mr. Askarov's shirt and took photographs of several large bruises on Mr. Askarov's side and lower back.<sup>128</sup> Mr. Askarov also signed a power of attorney, in which he confirmed again that he had been beaten for four days.<sup>129</sup>
63. One of Mr. Askarov's co-defendants, Mr. Rasulov, attempted to write a similar note to his lawyer, Ms. Tatiana Tomina, saying that the prisoners were beaten every night. However, the police officer who was observing the meeting grabbed at the paper and Ms. Tomina had to tear up the note to prevent Mr. Rasulov suffering retaliation.<sup>130</sup>
64. After the meeting, Mr. Toktakunov sought permission from the head of the police station to give Mr. Askarov a pair of reading glasses and a copy of the Criminal Procedure Code, but was denied.<sup>131</sup>
65. Mr. Toktakunov then went back to prosecutor Turajanova to inform her about the large bruises on Mr. Askarov's body and to ask her to order a medical examination. However, prosecutor Turajanova refused to conduct any examination because she claimed that an earlier official medical examination had not found any signs of torture or other ill-treatment. She refused to provide Mr. Toktakunov with a copy of the forensic report until the criminal investigation concluded.<sup>132</sup>
66. On the afternoon of 22 June, Mr. Toktakunov filed a written petition with Mr. Bakirov, the prosecutor of Bazar-Korgon region, requesting a medical examination of Mr. Askarov and a private meeting with him in accordance with Articles 42 and 48 of the Criminal Procedure Code. Mr. Toktakunov specified that he had identified bruises on Mr. Askarov's back, that Mr. Askarov was fearful of talking in the presence of guards and that there were

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<sup>124</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 5 and 9; Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010.

<sup>125</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 4 and 6; see also Exhibit 79: ICJ Report, para. 59.

<sup>126</sup> Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 6; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 41; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>127</sup> Exhibit 28(a): Note on Torture; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 6; Exhibit 79: ICJ Report, para. 59.

<sup>128</sup> Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 6; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 42.

<sup>129</sup> Exhibit 28(a): Power of Attorney to VOF with (b) Note on torture; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 41.

<sup>130</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>131</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 7.

<sup>132</sup> Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 8.

grounds to believe he had been tortured.<sup>133</sup> Mr. Toktakunov also publicised the photographs of Mr. Askarov's bruises.<sup>134</sup>

67. At 2:00 am the following morning, 23 June, police officers rushed into Mr. Askarov's cell in the Bazar-Korgon police station and threatened that they would kill him if he did not sign a document they had prepared, which stated that he did not need a medical examination. Mr. Askarov felt that he had no choice but to sign the document.<sup>135</sup>
68. In late June, the Kyrgyz Ombudsman sent three employees to visit Mr. Askarov. He gave the visiting employees a written statement regarding the beatings that he had suffered. Mr. Askarov also spoke to the Ombudsman himself by phone, confirming that he has been tortured and telling the Ombudsman "they beat everybody in here".<sup>136</sup> Once again, officers came into his cell late at night and threatened to deal with him if he did not withdraw the complaint.<sup>137</sup>

#### First attack on Mr. Toktakunov and Ms. Japarova (23 June 2010)

69. On 23 June, Mr. Toktakunov went to the Jalal-Abad oblast prosecutor's office, accompanied by Ms. Baktykhan Japarova, an officer from the human rights organization *Spravedlivost*, and filed a further complaint.<sup>138</sup> The complaint, which was accompanied by photographs of his bruises, set out the evidence showing that Mr. Askarov had been tortured, and explained that prosecutor Turajanova was obstructing Mr. Toktakunov's activities as defence counsel by refusing to provide him with copies of the medical examination of Mr. Askarov and documents relating to the criminal investigation. Mr. Toktakunov asked the Jalal-Abad prosecutor's office to initiate criminal proceedings in relation to both the torture and obstruction of defence counsel.<sup>139</sup>
70. After submitting the complaint, Mr. Toktakunov and Ms. Japarova met the head of the special interdepartmental investigation group, Mr. Jyldyzbek Cholponbaev, to discuss access to documents from Mr. Askarov's case file and to request a private meeting with

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<sup>133</sup> Exhibit 29: Nurbek Toktakunov's petition to the Prosecutor of Bazar-Korgon region, 22 June 2010;

<sup>134</sup> See e.g. Human Rights Watch, "Kyrgyzstan: Ensure Safety, Due Process for Detained Activist", 24 June 2010, available at <http://www.hrw.org/news/2010/06/23/kyrgyzstan-ensure-safety-due-process-detained-activist>; Amnesty International, "Kyrgyzstan: Detained Human Rights Activist Beaten", 25 June 2010, available at <http://amnesty.org.ru/node/1435>; Svodka, "N.Toktakunov: I am personally convinced that the human rights activist A.Askarov was tortured", 23 June 2010, available at <http://svodka.akipress.org/news:51661>.

<sup>135</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 43; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 5, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>136</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 45; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Exhibit 79: ICJ Report, paras. 63-64.

<sup>137</sup> Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Human Rights Watch, "Kyrgyzstan: Stop miscarriage of justice", 26 January 2011, available at <http://www.hrw.org/news/2011/01/26/kyrgyzstan-stop-miscarriage-justice>.

<sup>138</sup> Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 10-11; Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, paras. 5-6; Exhibit 79: ICJ Report, para. 65.

<sup>139</sup> Exhibit 31: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010. Such proceedings would have been brought under article 305 (torture) and 318 (impediment of actions of defence counsel) of the Criminal Code.

Mr. Askarov. Both Mr. Cholponbaev and the prosecutor of Jalal-Abad oblast, Mr. Turdumambetov, promised Mr. Toktakunov a private meeting with Mr. Askarov.<sup>140</sup>

71. Later that morning, Mr. Toktakunov and Ms. Japarova went to Bazar-Korgon police station to see Mr. Askarov. When they arrived at the police station, a group of 10 to 15 people approached them. They said that they were relatives of the deceased police officer, and threatened Mr. Toktakunov with violence if he continued to defend Mr. Askarov, stating that they would kill him because he was an ethnic Kyrgyz defending an Uzbek.<sup>141</sup> The relatives behaved aggressively: swearing at Mr. Toktakunov, calling him a traitor and using threatening sign language. A man who claimed he was a brother of the deceased police officer told Mr. Toktakunov to leave the case, otherwise he would “not get out of here alive”.<sup>142</sup> Mr. Toktakunov discovered that the relatives had been told a false rumour that he had brought a bribe to get Mr. Askarov out of detention.<sup>143</sup> During this incident, several prosecutors, including prosecutor Turajanova, were standing nearby but failed to intervene or take any action against the relatives.<sup>144</sup>
72. The relatives followed Mr. Toktakunov and Ms. Japarova as they entered the prosecutor’s office nearby. Prosecutor Turajanova told Ms. Japarova to leave her office as she was not a lawyer.<sup>145</sup> As she left the office, the relatives continued to insult and attack Ms. Japarova, threatening that they might take her hostage. A brother of the deceased police officer threatened to find Ms. Japarova and her family to “settle accounts”, and a sister told Ms. Japarova that they would attempt to get even with Ms. Gritsenko too.<sup>146</sup> While Mrs. Japarova waited for Mr. Toktakunov on the staircase of the prosecutor’s office, other female relatives insulted and struck Ms. Japarova on her head and shoulder blade, asking how much money she had taken from ethnic Uzbeks to represent them and threatening to lynch Mr. Askarov and the lawyers if he was released.<sup>147</sup>
73. Despite the attack on Ms. Japarova, she did not file formal complaints because she considered that the prosecutors in Bazar-Korgon had helped facilitate the attack by refusing to intervene. However, she did raise concerns over the behaviour of prosecutor Turajanova with the Prosecutor General in late June.<sup>148</sup>
74. Lawyers for other co-defendants were also subject to intimidation and interference when they attempted to meet and prepare the defence of their clients. Ms. Tatiana Tomina and her colleague Mr. Ulugbek Usmanov were prevented from meeting their clients in private, were followed while in Bazar-Korgon, and had their car vandalized. They were subsequently warned by the officer investigating the case that they should leave town and

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<sup>140</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 11-12; Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, para. 6.

<sup>141</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 13-14; Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, paras. 8-10; Exhibit 79: ICJ Report, para. 66; see also Exhibit 39: Nurbek Toktakunov’s complaint to the Ministry of Internal Affairs, 4 August 2010.

<sup>142</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 14, 16; Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, para. 11.

<sup>143</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 14.

<sup>144</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 15.

<sup>145</sup> Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, para. 11.

<sup>146</sup> Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, paras. 12 and 14; Exhibit 7: Statement of Valentina Gritsenko, 3 July 2012, para. 19.

<sup>147</sup> Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, paras. 10 and 15-18.

<sup>148</sup> Exhibit 8: Statement of Baktykhan Japarova, 30 June 2012, paras. 21 and 24.

that even the police investigators were under pressure from supporters of the deceased officer in this case.<sup>149</sup>

#### Second meeting with Mr. Askarov (23 June 2010)

75. Meanwhile, prosecutor Turajanova conducted a further interrogation of Mr. Askarov. Mr. Toktakunov requested a private meeting prior to interrogation, and was given three to five minutes to talk with Mr. Askarov alone.<sup>150</sup> During this brief talk, Mr. Askarov explained with a sign that he could not speak freely and that he feared that he would be killed if he complained.<sup>151</sup> When prosecutor Turajanova came back to the room to conduct the official interrogation, Mr. Askarov said that he received his injuries from his cellmates and had no complaints against law enforcement officers.<sup>152</sup> Mr. Toktakunov did not interfere because Mr. Askarov had conveyed that he feared retaliation if he tried to speak the truth at that time.<sup>153</sup>
76. After the interrogation, Mr. Toktakunov orally requested that prosecutor Turajanova provide him with copies of documents from the case file, such as records of confrontation, a record of search, and a record of seizure of Mr. Askarov's car. Prosecutor Turajanova allowed him to look at the documents but did not permit him to take photographs of them for his records.<sup>154</sup>

#### Appeal on Pre-Trial Detention (24 June 2010)

77. On 24 June 2010, Mr. Toktakunov attended a hearing at Jalal-Abad Regional Court to consider Mr. Askarov's appeal against his pre-trial detention (see para. 51, above). Mr. Askarov was taken from Bazar-Korgon police station to Jalal-Abad for the hearing.<sup>155</sup> Before the proceedings, Mr. Askarov heard one of the police officers being told that the relatives of the deceased officer were threatening judges as well.<sup>156</sup> Relatives of the deceased officer were present at the hearing and shouted and swore at Mr. Askarov inside and outside the courtroom, threatening that they would not leave any of his relatives – even his grandchildren – alive, and would set the courthouse on fire if he was released.<sup>157</sup> During a break in the hearing, Mr. Askarov described to Mr. Toktakunov how he had been beaten, made to gather cigarette butts and humiliated and kicked by one of the police officers' sons. He also described how police officers had made him come to the entrance of his cell, where he was hit repeatedly.<sup>158</sup>
78. At the hearing, Mr. Toktakunov argued that the prosecutors based the pre-trial detention on the gravity of the crime rather than any likelihood of interference with the investigation,

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<sup>149</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>150</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 17; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 43; Exhibit 79: ICJ Report, para. 67; Exhibit 32: Addition to Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 25 June 2010.

<sup>151</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 17; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 43.

<sup>152</sup> Exhibit 30: Record of additional questioning as suspect, 23 June 2010.

<sup>153</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 18.

<sup>154</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 19; see also Exhibit 33: Petition to prosecutor of Jalal-Abad oblast, 25 June 2010.

<sup>155</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 54.

<sup>156</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 54.

<sup>157</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 54; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 21; Exhibit 79: ICJ Report, para. 68.

<sup>158</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 21.

that there was no reason to suspect that Mr. Askarov would abscond, and that Mr. Askarov was a well-known person who had no previous convictions. Nevertheless, the court upheld Mr. Askarov's pre-trial detention mainly on the basis that the charges against him were serious crimes under the Criminal Procedure Code.<sup>159</sup> Although the court recited "a possibility" that he might refuse to testify, change his residence or escape, the decision provides no details of why the court came to these conclusions or how these factors satisfied the detention requirements in the Criminal Procedure Code.<sup>160</sup> Mr. Askarov was held in the Jalal-Abad detention center for two days, before being returned to the Bazar-Korgon police station.<sup>161</sup>

79. On 25 June 2010, Mr. Toktakunov filed a further complaint with the prosecutor of Jalal-Abad oblast about the actions of prosecutor Turajanova. He reiterated that she continued to impede his activities as defence counsel and once more asked the prosecutor of Jalal-Abad oblast to institute criminal proceedings against her and into the torture of Mr. Askarov.<sup>162</sup> He also asked the prosecutor of Jalal-Abad oblast to pose an additional question to the medical expert who earlier examined Mr. Askarov, namely to clarify whether Mr. Askarov's injuries could have been caused by a single fall to the floor, as he had claimed when the police officers were present.<sup>163</sup>
80. On 28 June 2010, the prosecutor refused to initiate a criminal case, citing Mr. Askarov's testimony that he had no complaints and was beaten by cellmates, and claiming that Mr. Toktakunov had been permitted to meet with Mr. Askarov alone on 23 June 2010.<sup>164</sup> In refusing to open a criminal investigation, the prosecutor again reiterated that "The guilt of Askarov A. ... is proved by the testimony of the aggrieved policemen of Bazar-Korgon DIA ..., by the minutes of the confrontation between these police officers and the accused Askarov A" and by the testimony of two other witnesses.<sup>165</sup>

Vulnerable state of Mr. Askarov and conditions at Bazar-Korgon police station

81. On 25 June 2010, Mr. Toktakunov filed a separate application with the prosecutor of Jalal-Abad oblast asking to relocate Mr. Askarov from the Bazar-Korgon police station to a pre-trial detention center in Osh, given that Mr. Askarov was particularly vulnerable while he was held at the same police station where the deceased officer worked and where the investigation was being conducted.<sup>166</sup> Mr. Toktakunov explained that the risk to Mr. Askarov's life and health at Bazar-Korgon was influencing his testimony, and reiterated

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<sup>159</sup> Exhibit 27: Decision of Jalal-Abad oblast court on detention appeal, 24 June 2010.

<sup>160</sup> Exhibit 79: ICJ Report, para. 68.

<sup>161</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 56.

<sup>162</sup> Exhibit 32: Addition to Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 25 June 2010; see also Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 22; Exhibit 79: ICJ Report, para. 70.

<sup>163</sup> Exhibit 32: Addition to Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 25 June 2010.

<sup>164</sup> Exhibit 34: Decision of Jalal-Abad prosecutor refusing to initiate criminal proceedings, 28 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 23; Exhibit 79: ICJ Report, para. 72.

<sup>165</sup> Exhibit 34: Decision of Jalal-Abad prosecutor refusing to initiate criminal proceedings, 28 June 2010; Exhibit 79: ICJ Report, para. 72.

<sup>166</sup> Exhibit 33: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast to relocate Askarov, 25 June 2010; Statement of Nurbek Totakunov, para. 22; Exhibit 79: ICJ Report, para. 70.

that Mr. Askarov was beaten by the staff of Bazar-Korgon police station and not by other detainees.<sup>167</sup>

82. On 28 June the prosecutor refused to relocate Mr. Askarov, citing an order of the Ministry of Interior regarding the paucity of pre-trial detention facilities in the Kyrgyz Republic.<sup>168</sup> Accordingly Mr. Askarov was returned from Jalal-Abad, where he had been transferred for the hearing of his detention appeal, to the Bazar-Korgon police station, where he continued to be detained.<sup>169</sup>
83. At the Bazar-Korgon police station, Mr. Askarov was held for approximately two months in a 2 by 3.5 meter cell which he shared with between seven and 12 people. There were no separate beds, only one wide bench, so detainees took turns to sleep.<sup>170</sup> During his detention, police officers continually incited Mr. Askarov's cellmates to rape him. However, the inmates refused, supporting Mr. Askarov as a "fearless defender against the police".<sup>171</sup>
84. The detainees at Bazar-Korgon were provided with only 300ml of water per day each, and one loaf of bread and one bowl of noodles for the entire cell.<sup>172</sup> The cell was perpetually dark, with one small window and one bulb, making it impossible to read,<sup>173</sup> and lacked ventilation, especially in summer, meaning that Mr. Askarov often had to stand by the window to breathe properly.<sup>174</sup> The cell also lacked proper toilet facilities. There was one bucket in the cell to urinate in, and inmates were taken to the bathroom only twice a day, when the entire group (seven to 12 people) were given 10 minutes. As a result, inmates often were unable to use the bathroom. This 10 minute toilet break was also the only time that the inmates were permitted to exercise.<sup>175</sup>
85. The effect of the beatings, in particular to Mr. Askarov's kidneys, meant that his health suffered. This was compounded by his inability to use the toilet. By the time that he was transferred from Bazar-Korgon in early August, he was unable to use the bathroom properly, and he urinated thick blood for 15-20 minutes.<sup>176</sup> He also experiences kidney pain to the present day.<sup>177</sup> Despite this, Mr. Askarov was provided with virtually no medical assistance during his two months at Bazar-Korgon police station. An ambulance was called once and Mr. Askarov was checked by doctors from the Bazar-Korgon hospital who noted that Mr. Askarov "urgently needs to be hospitalized; otherwise he will die here". Although the doctors gave Mr. Askarov a prescription, the personnel at Bazar-Korgon station withheld all medication.<sup>178</sup>
86. Throughout his detention in Bazar-Korgon police station, Mr. Askarov was also not permitted to see his family (except for his brother when he was also detained for a few days

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<sup>167</sup> Exhibit 33: Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast to relocate Askarov, 25 June 2010.

<sup>168</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 23.

<sup>169</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 56; Exhibit 79: ICJ Report, para. 71.

<sup>170</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 50.

<sup>171</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 38.

<sup>172</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 53.

<sup>173</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 50.

<sup>174</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 50; Exhibit 79: ICJ Report, para. 86.

<sup>175</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 51-52.

<sup>176</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 51; Exhibit 79: ICJ Report, para. 86.

<sup>177</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 32.

<sup>178</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 48-49.

from 15 June), although several members including his nephew and sister-in-law attempted to visit him on a number of occasions. This caused him substantial anguish, especially regarding his then 83 year old mother.<sup>179</sup> Mr. Askarov's mother died in May 2012, and he was not permitted to attend the funeral.<sup>180</sup>

#### Attack on relatives of Mr. Askarov

87. On 21 July 2010, at about 11:00 am, Mr. Askarov's sister in law, Turdihan Askarova, came to the Bazar-Korgon prosecutor's office to ask for permission to see Mr. Askarov and give him some food, a radio and an air ventilator. Mrs. Askarova was attacked by relatives of the deceased police officer and was pelted with stones, as a result of which she required medical treatment at a hospital in Bishkek.<sup>181</sup> Mrs. Askarova and her husband lodged a complaint with local human rights defenders, alleging that prosecutor Turjanova and the police officers were responsible for alerting the relatives and organizing the attack.<sup>182</sup>

#### Third meeting with Mr. Askarov and second attack on lawyer (2 August 2010)

88. On 2 August 2010, Mr. Toktakunov informed the prosecutor of Jalal-Abad oblast, Mr. Kanybek Turdumambetov, that he still had not received a proper opportunity to speak with Mr. Askarov in private, that he was being threatened by relatives of the deceased police officer, and that he believed that the relatives were being informed of his visits by someone in the prosecutor's office. Mr. Turdumambetov therefore accompanied Mr. Toktakunov to the police station in Bazar-Korgon to ensure his safety and assured him that he would be allowed a private meeting with Mr. Askarov.<sup>183</sup>
89. At the police station Mr. Toktakunov was allowed to meet with Mr. Askarov. However, after 10 minutes police officers returned and took Mr. Askarov back to the cell. The police told Mr. Toktakunov that relatives of the deceased police officer had gathered outside the station, that they knew he was inside, and that they were threatening to burn down the building due to his contact with Mr. Askarov.<sup>184</sup>
90. The police asked Mr. Toktakunov to go outside through the enclosed courtyard of the station. Once in the courtyard, Mr. Toktakunov found himself completely alone, as all police officers who had been in the courtyard disappeared.<sup>185</sup> Mr. Toktakunov then called Mr. Turdumambetov to inform him about the situation.<sup>186</sup> A group of 10 to 15 men and women entered the premises and attacked Mr. Toktakunov. They took his briefcase which contained documents relating to the case, tore his shirt, cursed him and again threatened to kill him unless he stopped defending an Uzbek. This attack lasted for approximately 10

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<sup>179</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 47.

<sup>180</sup> Exhibit 5: Open Society Justice Initiative interview with Azimjan Askarov, 5 July 2012.

<sup>181</sup> Exhibit 38: Petition of H. Askarov and T. Askarova to "Voice of Freedom", 27 July 2010; Exhibit 79: ICJ Report, para. 76.

<sup>182</sup> Exhibit 38: Petition of H. Askarov and T. Askarova to "Voice of Freedom", 27 July 2010; see also Exhibit 79: ICJ Report, para. 77, discussing the pattern of attacks on persons coming to visit Mr. Askarov.

<sup>183</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 25.

<sup>184</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 28; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 56; Exhibit 79: ICJ Report, para. 80; Exhibit 39: Nurbek Toktakunov's complaint to the Ministry of Internal Affairs, 4 August 2010.

<sup>185</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 28-29; Exhibit 39: Nurbek Toktakunov's complaint to the Ministry of Internal Affairs, 4 August 2010.

<sup>186</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 30.

minutes, until Mr. Turdumambetov, the prosecutor of Jalal-Abad oblast, arrived and stopped the violence.<sup>187</sup>

91. That evening, after his return to Jalal-Abad, Mr. Toktakunov talked to Mr. Turdumambetov about what had occurred at the Bazar-Korgon station. Mr. Turdumambetov transferred Mr. Askarov to another police station in Jalal-Abad the next day, where he remained for one month.<sup>188</sup>
92. Shortly after the transfer, on 3 August 2010, Mr. Toktakunov had his first and only proper private meeting with Mr. Askarov at the Jalal-Abad station, which lasted for about one hour.<sup>189</sup>
93. On 4 August 2010, Mr. Toktakunov wrote a complaint to the Ministry of the Interior regarding the 2 August attack on him, asking that the staff of the Bazar-Korgon police station be replaced by more competent staff.<sup>190</sup> The Ministry of the Interior, in a letter dated 16 August, informed Mr. Toktakunov that they had carried out an inspection in the Bazar-Korgon Department of Internal Affairs and discussed compliance with internal regulations with staff there.<sup>191</sup>

#### **Prosecution and Further Torture of Mr. Askarov**

94. On 11 August 2010, the prosecutor of Jalal-Abad oblast, Mr. Turdumambetov, announced that he had sent the case against Mr. Askarov and seven other defendants to the Bazar-Korgon District Court for trial.<sup>192</sup>
95. On 23 August 2010, Mr. Toktakunov petitioned Jalal-Abad Regional Court to move the hearing of the case to a different district court for security considerations.<sup>193</sup> He explained that relatives of the deceased police officer had threatened the lawyers of the accused and physically attacked them, and that he had witnessed the inability of Bazar-Korgon police officers to provide adequate security for the court participants. Mr. Toktakunov also argued that, under these circumstances, there were serious doubts regarding the ability of the Bazar-Korgon District Court judge to impartially consider the case.<sup>194</sup> However, despite this request, the trial was still heard by a judge from Bazar-Korgon District Court in the premises of the District Court in Nooken village (approximately 60 kilometres away from Bazar-Korgon).<sup>195</sup>

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<sup>187</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 31-33; Exhibit 39: Nurbek Toktakunov's complaint to the Ministry of Internal Affairs, 4 August 2010.

<sup>188</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 35; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 57.

<sup>189</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 36.

<sup>190</sup> Exhibit 39: Nurbek Toktakunov's complaint to the Ministry of Internal Affairs, 4 August 2010; Exhibit 79: ICJ Report, para. 81.

<sup>191</sup> Exhibit 40: Letter from Ministry of Interior, 16 August 2010; Exhibit 79: ICJ Report, para. 83.

<sup>192</sup> Exhibit 41: Notification from Jalal-Abad oblast Prosecutor's Office, 11 August 2010. Mr. Askarov was charged with eight crimes: complicity in hostage taking, illegal acquisition and storage of firearms, acquisition and storage of extremist materials, incitement of hatred on the basis of ethnicity, organisation of mass disorder, attempt to commit murder, murder of a person in a helpless stage, and complicity in murder of a police officer. See Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>193</sup> Exhibit 42: Nurbek Toktakunov's petition to Jalal-Abad oblast court, 23 August 2010.

<sup>194</sup> Exhibit 42: Nurbek Toktakunov's petition to Jalal-Abad oblast court, 23 August 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 38; Exhibit 79: ICJ Report, para. 84.

<sup>195</sup> Exhibit 79: ICJ Report, para. 84.

96. In preparation for the trial, Mr. Askarov was transferred to the temporary detention facility in Nookan police station on the morning of 2 September 2010.<sup>196</sup> When he arrived, the staff of the detention center in Nookan confiscated the notes that Mr. Askarov had made in preparation for his trial: they told him he would not speak at the trial and therefore did not need his notes.<sup>197</sup>

First day of District Court Trial (2 September 2010)

97. The first day of the hearing took place on 2 September 2010 before Judge Nurgazy Alymbaev. Mr. Toktakunov could not participate at this hearing as he was not notified of the date and time of the hearing until the evening of 1 September, by phone. Given that Nookan village is located about 10 hours away by car from Bishkek, where Mr. Toktakunov lived, he could not physically reach the court by the assigned date.<sup>198</sup>
98. Outside the court, there were a large number of police officers and supporters.<sup>199</sup> The courtroom was also filled with police officers in civilian clothes, relatives of the deceased police officer and prosecution witnesses. In contrast, family members of the defendants were prevented from entering the courtroom.<sup>200</sup>
99. The relatives and supporters of the deceased policemen repeatedly shouted at the defence lawyers, threatening them, interrupting their presentations, and abusing and humiliating them because they were representing ethnic Uzbeks.<sup>201</sup> They said that they had hired killers for every defence lawyer and accused in the case.<sup>202</sup> The International Commission of Jurists also reports allegations that threats were made by police officers.<sup>203</sup> Neither the judge nor court security personnel took any steps to protect defence counsel from these attacks or to maintain order in the courtroom: while the judge called for respect for order in

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<sup>196</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 57.

<sup>197</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 57.

<sup>198</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 39; Exhibit 79: ICJ Report, para. 87; Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

<sup>199</sup> Mr. Askarov estimates around 200 officers – see Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 58.

<sup>200</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 59; Human Rights Watch, “Kyrgyzstan's Unjust Courtrooms”, 18 October 2010, available at <http://www.hrw.org/news/2010/10/18/kyrgyzstans-unjust-courtrooms>; Trial observation report by Kylum Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>. Kylum Shamy is a Kyrgyz non-profit organization that focuses on legal aid and human rights advocacy. It monitors judicial proceedings as part of projects such as “Nobody should be exposed to torture”, “Social campaign on torture prevention in Kyrgyzstan”, “Without justice there is no stability”.

<sup>201</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 60; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012; Human Rights Watch, “Kyrgyzstan: Stop miscarriage of justice”, 26 January 2011, available at <http://www.hrw.org/news/2011/01/26/kyrgyzstan-stop-miscarriage-justice>; Exhibit 79: ICJ Report, para. 91.

<sup>202</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 60.

<sup>203</sup> Exhibit 79: ICJ Report, para. 89.

the courtroom, he did not warn or discipline any of the abusive spectators.<sup>204</sup> Indeed, the judge himself appeared to be vulnerable to the pressure from the spectators.<sup>205</sup>

100. The relatives and supporters of the deceased police officer also physically attacked the defence lawyers and defendants both inside and outside the courtroom. During an adjournment, relatives of the deceased police officer threw stones at relatives of the accused and attacked them with sticks. This took place in the presence of police officers, who made no effort to intervene. Rather, they told the relatives who were being attacked to go away and not to return.<sup>206</sup> Defence lawyers were also punched.<sup>207</sup>
101. Mr. Askarov and the other seven co-defendants were held in a cage in the courtroom throughout the proceedings. Towards the end of the hearing, relatives of the deceased police officer attempted to beat the defendants through the cage that they were held in during the hearings. One relative threw a glass at the cage, sending shards of glass towards them and one of the defence lawyers, Ms. Tatiana Tomina.<sup>208</sup> At the end of the hearing, as the judge left the room, the police opened the cage and began beating the defendants. One officer kicked Mr. Askarov in the head, near his left eye, causing him to lose consciousness.<sup>209</sup>
102. In total, on 2 September in the absence of the Mr. Toktakunov, and under these conditions, the court heard 16 prosecution witnesses,<sup>210</sup> including 14 staff members of the Bazar-Korgon police station and the governor of the Bazar-Korgon district administration.<sup>211</sup> Continued attacks from the relatives and supporters of the deceased police officer prevented defence counsel from questioning the witnesses.<sup>212</sup> Defence counsel made a few initial procedural applications, requesting that the trial and detainees be moved to a location with proper security. This request was rejected, and the judge threatened to have the

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<sup>204</sup> Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>; Statement of Azimjan Askarov, para. 60; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012; Exhibit 79: ICJ Report, para. 91.

<sup>205</sup> Exhibit 79: ICJ Report, para. 90.

<sup>206</sup> Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>; Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>; Human Rights Watch, “Kyrgyzstan's Unjust Courtrooms”, 18 October 2010, available at <http://www.hrw.org/news/2010/10/18/kyrgyzstans-unjust-courtrooms>.

<sup>207</sup> Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>.

<sup>208</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 61; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012; Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>; Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>; Human Rights Watch, “Kyrgyzstan's Unjust Courtrooms”, 18 October 2010, available at <http://www.hrw.org/news/2010/10/18/kyrgyzstans-unjust-courtrooms>; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 39; Exhibit 79: ICJ Report, para. 91.

<sup>209</sup> Exhibit 79: ICJ Report, para. 92; Exhibit 69: Medical Report by Dr. E.A. Khalitova in Correctional Colony No. 47, Bishkek, 12 October 2011.

<sup>210</sup> Exhibit 79: ICJ Report, para. 87; Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

<sup>211</sup> Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>

<sup>212</sup> Exhibit 80: Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>.

defence lawyers stripped of their licenses if they failed to appear at the next hearing, scheduled for 6 September.<sup>213</sup> As a result of the continued threats and interruptions, defence counsel also could not make, or have considered, substantive applications.<sup>214</sup>

#### Torture of Mr. Askarov at the Nookan Police Station (2 September 2010)

103. After the 2 September court hearing, Mr. Askarov and his co-defendants were returned to the Nookan police station. There, they were taken to the backyard and again beaten for several hours by 20 police officers from both the Bazar-Korgon and Nookan police stations. During the beating, Mr. Askarov and the other defendants were handcuffed and defenceless. While they were being beaten, the officers told them they must remain quiet during court trials and give only “yes” and “no” answers to questions.<sup>215</sup> One officer who Mr. Askarov knew from his human rights work said to him “Do you remember me, writer?”<sup>216</sup>
104. Later that evening, in a corridor of the police station, Mr. Askarov was again beaten by two police officers. He was held down and repeatedly struck with a large bottle filled with water.<sup>217</sup> When he started to lose consciousness, the officers threw Mr. Askarov back in his cell, kicking him from behind.<sup>218</sup>
105. After the beatings, on the evening of 2 September, Mr. Askarov saw one of his co-defendants, Mr. Muhamadzakir Kochkarov, with his face covered in blood. Mr. Kochkarov told Mr. Askarov that the police had made him promise to give evidence against Mr. Askarov when the trial resumed,<sup>219</sup> although he subsequently refused to do so.<sup>220</sup>
106. For the next two days, while at the Nookan police station, Mr. Askarov was repeatedly abused by more than 20 police officers. Among other indignities, he was not allowed to go to the toilet and was hit or kicked by officers whenever he was returned to his cell.<sup>221</sup>
107. Shortly after the conclusion of the first day of trial, on 2 September, the local human rights NGO *Spravedlivost* and lawyers representing Mr. Askarov’s co-defendants informed human rights defenders in Bishkek about the signs of continued mistreatment of Mr. Askarov and his co-defendants. Ms. Aziza Abdirasulova, head of the human rights organization *Kylym-Shamy*, raised these allegations with then Kyrgyz President, Roza

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<sup>213</sup> Human Rights Watch, “Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender”, 3 September 2010, available at <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>;

Exhibit 80: Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>.

<sup>214</sup> Exhibit 80: Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>; Exhibit 2: Statement of Asimjan Askarov, para. 60; Exhibit 79: ICJ Report, para. 89 (“Defence lawyers found it necessary to be extremely cautious during the defence, due to fears for their own safety”).

<sup>215</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 63; Exhibit 79: ICJ Report, para. 93. Mr. Askarov also recounted that during one beating the officers told him that he was “too intelligent and not letting them prosecute me” - Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p.6, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>216</sup> Exhibit 79: ICJ Report, para. 93.

<sup>217</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 64; Exhibit 79: ICJ Report, para. 93.

<sup>218</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 64.

<sup>219</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 65; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>220</sup> Exhibit 79: ICJ Report, para. 94; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 69.

<sup>221</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 67; Exhibit 79: ICJ Report, para. 93.

Otunbaeva; and President Otunbaeva ordered the Deputy Minister of the Interior, Mr. Alymbekov, to go to Nookan along with Ms. Abdirasulova to investigate.<sup>222</sup>

108. Sometime between 3 and 5 September, after speaking with the President, Mr. Alymbekov and Ms. Abdirasulova travelled separately to Nookan to investigate the alleged mistreatment of Mr. Askarov and his co-defendants.<sup>223</sup> The police denied them access to Mr. Askarov and his co-defendants for approximately 12 hours. During this time, Ms. Abdirasulova waited in the police station, where she was insulted and threatened by relatives of the deceased police officer and was told by a member of the Ministry of the Interior that she was not “a Kyrgyz” as she defended Uzbeks.<sup>224</sup>
109. When news of the delegation reached Nookan, the head of the detention facility warned Mr. Askarov not to complain to them.<sup>225</sup> Other officers demanded that the senior prisoner persuade Mr. Askarov not to complain, otherwise other detainees would be punished.<sup>226</sup> Eventually, Ms. Abdirasulova was permitted to speak with Mr. Askarov through a window in the door to his cell, accompanied by Mr. Alymbekov and approximately 10 staff including the head of the detention facility.<sup>227</sup> Because of the pressure that had been exerted on him, Mr. Askarov did not complain to the delegation, despite the fact that Ms. Abdirasulova could see bruises on his face and on his cellmate.<sup>228</sup> However, one of Mr. Askarov’s co-defendants, Ms. Mamadalieva, whispered that all of the defendants had been beaten.<sup>229</sup>

#### Resumption of Trial (6 September 2010)

110. On Sunday, 5 September 2010, Mr. Toktakunov arrived in the Jalal-Abad province. He had been informed by Ms. Aziza Abdirasulova that Mr. Askarov and the other defendants had been beaten at the Nookan police station. He attempted to visit Mr. Askarov and the other detainees, along with two lawyers of the other defendants. However he was denied a meeting as there was no one at the prosecutor’s office or the police department of Jalal-Abad oblast to grant permission to enter the detention facility on a Sunday.<sup>230</sup>
111. On 6 September 2010, the Court resumed the hearing of the case. Posters with anti-Uzbek slogans demanding the execution of the defendants were hung on the courthouse doors.<sup>231</sup> Similar to the first day, the courtroom was filled with police officers, this time in uniform, and relatives of the deceased officer and their supporters. Relatives of the defendants were again prevented from entering, and were threatened and intimidated when they attempted to attend. When the defendants entered the courtroom, the family of the deceased policeman

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<sup>222</sup> Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, paras. 1-2.

<sup>223</sup> Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, para. 3.

<sup>224</sup> Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, paras. 5-6.

<sup>225</sup> Exhibit 10: Statement of Azimjan Askarov, para. 67; Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, para. 9.

<sup>226</sup> Exhibit 79: ICJ Report, para. 95.

<sup>227</sup> Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, para. 9.

<sup>228</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 68; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010; Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, paras. 10-14; Exhibit 79: ICJ Report, para. 96.

<sup>229</sup> Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, para. 11.

<sup>230</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 40-41.

<sup>231</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 42; Exhibit 79: ICJ Report, para. 98; Exhibit 81: Frontline Defenders, “Kyrgyzstan: Beaten human rights defender faces death threats in Kyrgyz court”, September 2010, available at <http://www.frontlinedefenders.org/node/13327>.

attempted to attack them, shouting anti-Uzbek statements and demanding their execution.<sup>232</sup> During breaks in the trial, the defendants were hit with batons through the bars of the cage in which they were held.<sup>233</sup>

112. The crowd also continued to threaten and abuse the defence lawyers, shouting at Mr. Toktakunov “we will kill you. We will kill your family and will eat your children”,<sup>234</sup> and declaring that Ms. Tomina had no right to participate in the process, since she was of Russian ethnicity.<sup>235</sup> Throughout the remainder of the trial, statements by the defendants and their lawyers were met with insults, obscene language, anti-Uzbek expressions and calls for killing representatives of Uzbeks and threats of physical reprisals.<sup>236</sup> Relatives of the deceased police officer also threatened to burn the defendants and their lawyers with sulfuric acid.<sup>237</sup> Again, the judge did not take any measures against those responsible<sup>238</sup> - the trial was in effect governed by the victim’s supporters.<sup>239</sup> As a result, the defence lawyers spoke as little as possible, and they could not provide effective representation for Mr. Askarov and his co-defendants.<sup>240</sup>
113. At the hearing on 6 September, Mr. Toktakunov requested additional time to prepare his defence because he had not been afforded sufficient opportunity to meet with Mr. Askarov, and had no opportunity to meet with him since the 2 September hearing. He requested a private meeting with Mr. Askarov before the interrogation of his client commenced, given that he had a visible bruise under his left eye.<sup>241</sup> The other defendants also showed visible bruises.<sup>242</sup> The Court rejected both requests, and Mr. Toktakunov thus was not able to discuss the true origins of Mr. Askarov’s injuries with him (see para. 118, below).<sup>243</sup>
114. The Court heard numerous witnesses for the prosecution but none for the defence.<sup>244</sup> During the questioning of one prosecution witness, the judge told the prosecution lawyers

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<sup>232</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 43; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 69; Exhibit 79: ICJ Report, para. 99; Exhibit 81: Frontline Defenders, “Kyrgyzstan: Beaten human rights defender faces death threats in Kyrgyz court”, September 2010, available at <http://www.frontlinedefenders.org/node/13327>.

<sup>233</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 69.

<sup>234</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 43; Exhibit 81: Frontline Defenders, “Kyrgyzstan: Beaten human rights defender faces death threats in Kyrgyz court”, September 2010, available at <http://www.frontlinedefenders.org/node/13327>.

<sup>235</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012; Exhibit 79: ICJ Report, para. 99.

<sup>236</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 43; Exhibit 79: ICJ Report, paras. 99 and 105; Exhibit 83: Frontline Defenders and Human Rights Centre ‘Citizens against Corruption’, “Brief trial observation report on the hearing of the criminal case in Nooken district court of 6 September 2010 (Second session)”, p.2.

<sup>237</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>238</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 43; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>239</sup> Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>240</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 43, 45-46 and 59; Exhibit 79: ICJ Report, para. 99.

<sup>241</sup> Exhibit 43: Petition to have private meeting with client, 6 September 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 44; Exhibit 79: ICJ Report, para. 100.

<sup>242</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>243</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 46; Exhibit 79: ICJ Report, para. 102.

<sup>244</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 52.

what questions to ask, although they had already concluded their questioning.<sup>245</sup> When the defendants themselves were questioned, on several occasions supporters of the deceased police officer in the audience asked them questions without permission of the Court.<sup>246</sup>

115. Defence witnesses either could not get into the courtroom due to the intimidating behavior of the deceased officer's relatives or they refused to attend the trial due to safety concerns.<sup>247</sup> Three defence witnesses came to give evidence but could not enter the courtroom as the deceased officer's relatives were throwing stones and threatening them, forcing them to return to their homes.<sup>248</sup> One of the potential witnesses, Ms. Aziza Abdirasulova, was told by relatives of the deceased officer in front of the court that she would not leave the courtroom alive if she attended the trial.<sup>249</sup> Ms. Abdirasulova could have testified that Mr. Askarov warned the authorities in May 2010 that acts of violence were being prepared in Bazar-Korgon.<sup>250</sup> Other witnesses refused to attend the trial at all due to safety concerns, including a neighbour of Mr. Askarov, whose testimony could confirm that Mr. Askarov was not present at the place of the killing of the police officer (see further para. 144, below).<sup>251</sup> Witnesses for the other defendants were also attacked when they attempted to approach the court building.<sup>252</sup> Ms. Tomina reported this intimidation of witnesses to the court, which ignored her complaint.<sup>253</sup>
116. The Court also refused to summons defence witnesses. Mr. Toktakunov asked the court to summons General Ismail Isakov to testify. In May 2010, Mr. Askarov had told General Isakov that there were some suspicious armed vehicles in Bazar-Korgon. However, the judge refused to do so, asserting that it was the obligation of the defence to ensure witness attendance.<sup>254</sup> The Court also refused to summons the Imam and border guards who allegedly heard the conversation of Mr. Askarov with Akim in a calling for hostage taking episode.<sup>255</sup>
117. Despite the atmosphere of fear in the courtroom, and the inability of defence witnesses to testify, Mr. Askarov refuted the account given by the police witnesses and maintained that he was not in the area where the policeman was killed.<sup>256</sup> None of his co-defendants implicated Mr. Askarov in the events or placed him on the bridge, and an investigation by

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<sup>245</sup> Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

<sup>246</sup> Exhibit 79: ICJ Report, para. 99.

<sup>247</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 52 and 55; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 53; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, pp. 2-3, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>248</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 62; Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

<sup>249</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 53; Radio Free Europe, "Kyrgyz courtroom scenes leave justice in jeopardy", 22 October 2010, available at [http://www.rferl.org/content/Kyrgyz\\_Courtroom\\_Scenes\\_Leave\\_Justice\\_In\\_Jeopardy\\_/2198610.html](http://www.rferl.org/content/Kyrgyz_Courtroom_Scenes_Leave_Justice_In_Jeopardy_/2198610.html).

<sup>250</sup> See Exhibit 10: Statement of Aziza Abdirasulova, 17 September 2012, 17 September 2012.

<sup>251</sup> Exhibit 2: Statement of Nurbek Toktakunov, 12 July 2012, para. 52.

<sup>252</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>253</sup> Exhibit 9: Statement of Tatiana Tomina, 6 September 2012.

<sup>254</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 54.

<sup>255</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 69; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 7, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>256</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 47.

the government ombudsman's office similarly concluded that he was not at the scene prior to the killing and played no role in the police officer's death.<sup>257</sup>

#### Request for Medical Examination (6 September 2010)

118. At the hearing on 6 September, Mr. Askarov and four other defendants had bruises and physical signs of beatings on their faces, which trial observers stated had not been present at the previous hearing on 2 September.<sup>258</sup> Mr. Toktakunov and other defence lawyers petitioned the court to conduct a medical examination in accordance with Article 303 of the Criminal Procedure Code.<sup>259</sup> The judge did not initially address this request, nor did he ask the defendants how they received their injuries or whether they had any complaints.<sup>260</sup>
119. When the judge returned to Mr. Toktakunov's request for a medical examination at the end of the hearing on 6 September, he refused the request that the court conduct a medical examination as a judicial procedure or investigate the circumstances of the injuries. Instead, he instructed the prosecutor's office to conduct a medical examination, referring to the "everyday" nature of the injuries, and provide results by the following morning.<sup>261</sup>
120. On 7 September 2010 before the court session, the defendants who had signs of injuries were taken one by one for a medical examination in the temporary detention facility at Nookan police station, where they were being detained during the trial.<sup>262</sup> Dr. Sabirbaev, a local doctor selected by the prosecution, was invited to conduct this examination. Mr. Askarov refused the medical examination and claimed that he had received his injuries by falling down – he later explained that if he had told the truth, other prisoners would have been punished.<sup>263</sup> Nevertheless, Mr. Toktakunov took photos of the bruises on his face.<sup>264</sup> Dr. Sabirbaev testified to the court that all of the defendants refused the medical examination. However, when Mr. Toktakunov asked Dr. Sabirbaev whether Mr. Askarov had signs of beatings on his body, Dr. Sabirbaev confirmed that Mr. Askarov had bruises. Despite this affirmative response, the court transcript stated that Mr. Sabirbaev had denied the existence of bruises.<sup>265</sup>

#### Conclusion of Trial (8 September) and Verdict of District Court (15 September 2010)

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<sup>257</sup> Exhibit 79: ICJ Report, para. 29; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, pp. 2, 6.

<sup>258</sup> Exhibit 81: Frontline Defenders, "Kyrgyzstan: Beaten human rights defender faces death threats in Kyrgyz court", September 2010, available at <http://www.frontlinedefenders.org/node/13327>; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 44 and 46; Exhibit 79: ICJ Report, para. 104.

<sup>259</sup> Exhibit 44: Petition to conduct medical examination, 6 September 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 44; Exhibit 79: ICJ Report, para. 100; Exhibit 9: Statement of Tatiana Tomina, 6 September 2012. Article 303 of the CPC establishes a procedure of the medical examination in court. According to Article 303, the judge renders a decision to conduct an evaluation. It should be conducted in a separate room, the court takes a break and a medical specialist conducts an examination. After the examination, medical specialist signs a record of the examination and return to the court room together with the person who was examined and informs the court and other participants about any injuries or traces.

<sup>260</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 44; Exhibit 79: ICJ Report, para. 104; Exhibit 9: Statement of Tatiana Tomina.

<sup>261</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 48; Exhibit 79: ICJ Report, para. 100.

<sup>262</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 49; Exhibit 79: ICJ Report, para. 103.

<sup>263</sup> Exhibit 2: Statement of Azimjam Askarov, para. 68; Exhibit 79: ICJ Report, para. 103.

<sup>264</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 49; Exhibit 79: ICJ Report, para. 103.

<sup>265</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 50; Exhibit 79: ICJ Report, para. 104.

121. In his closing address on 8 September 2010, the last day of the hearings, Mr. Toktakunov reiterated the allegation that Mr. Askarov was tortured. He reminded the court of the impediments to his preparation of the defence, including the lack of adequate access to a lawyer, the lack of access to the case file, as well as the failure to conduct a proper medical examination of Mr. Askarov, and he raised the nexus between Mr. Askarov's treatment and his human rights activities challenging police abuses.<sup>266</sup> The prosecutor asked the Court to sentence Mr. Askarov to life imprisonment. Relatives of the deceased police officer asked for the death penalty (though it was abolished in Kyrgyzstan), and 15 police officers who were also participating as victims asked for the highest punishment for Mr. Askarov.
122. On 15 September 2010, the District Court delivered its verdict. It found Mr. Askarov guilty of all crimes charged, including complicity to commit murder, attempt to take hostages, incitement to ethnic hatred, participation in mass disorder, and possession of 10 rounds of ammunition, and sentenced him to life imprisonment. The Court also ordered the confiscation of his property and barred him from various civic and professional roles, including engaging in legal activities for non-governmental institutions, for three years.<sup>267</sup> The court also convicted the other seven co-defendants – one for similar charges of inciting ethnic violence and calling for the killing of the police officers, four for participating directly in the murder of the police officer, one for providing hand-made weapons, and one for inciting ethnic hatred and violence the day before the killing – and sentenced them to between nine years and life imprisonment.<sup>268</sup>
123. The International Commission of Jurists analysed the verdict, and noted that more than half of it (15 of the 29 to 30 pages) deals with Mr. Askarov.<sup>269</sup> Of this, there is only one paragraph on Mr. Askarov's statement, and no mention at all of the allegations of ill treatment made by him, his lawyer, or the other defendants and their lawyers. It dismisses the claims that the investigation was one-sided without describing the submissions or giving any reasons for its findings. The judgment also makes no mention of the circumstances in which the killing and alleged crimes took place, namely the widespread violence and fear of an attack on Bazar-Korgon. It portrays the barricade on the road as intended "to incite inter-ethnic hostility", with no mention of the evidence that it was designed to protect the village from attack, or the fact that this attack subsequently took place, leaving approximately 20 people dead, 50 wounded and 205 houses burned. While ignoring that context, the judgment abounds with references to the ethnic identity of those involved.<sup>270</sup>

Appeal and further ill-treatment of Mr. Askarov (October-November 2010)

124. On 23 September 2010, Mr. Abylakimov appealed the District Court's verdict to the Jalal-Abad Regional Court, and Mr. Toktakunov submitted further arguments on appeal.<sup>271</sup> Mr. Toktakunov argued that Mr. Askarov was denied a fair hearing by an independent and

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<sup>266</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 58.

<sup>267</sup> Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010. See Exhibit 79: ICJ Report, paras. 107-108.

<sup>268</sup> Exhibit 45: Verdict of Bazar-Korgon district court, 15 September 2010.

<sup>269</sup> Exhibit 79: ICJ Report, paras. 109-112.

<sup>270</sup> "terms used to indicate ethnic identity include "Uzbek people", "Kyrgyz people", "representatives of Uzbek ethnicity", "Kyrgyz nation", "Uzbek population", "Uzbek Diaspora", "persons of Uzbek ethnicity", "citizens of Uzbek ethnicity", "Uzbek ethnics", "people of Uzbek ethnicity", "Uzbeks" used synonymously and interchangeably without any clear distinction in the meaning." – ICJ Report, para. 111.

<sup>271</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 62-63; Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

impartial court, and that he had been denied the opportunity to meet with Mr. Askarov to prepare his defence. He informed the court that Mr. Askarov was repeatedly subjected to torture, that the local authorities and trial court had failed to investigate this, and that no adequate medical examinations had been conducted with respect to Mr. Askarov's injuries. He also outlined the threats and pressure that had been exerted on the defence by relatives of the deceased police officer during the trial, and the resulting impossibility of calling defence witnesses. He finally argued that Mr. Askarov's charges were based solely on the testimony of six police officers who had pre-existing hostile attitudes towards Mr. Askarov on account of his human rights work, and that this "discredit[ed] the entire results of the investigation of riots in Bazar-Korgon".<sup>272</sup>

125. The appeal hearing was scheduled to be held in Suzak village, approximately 20 km southeast of Bazar-Korgon and 10 km southwest of Jalal-Abad.<sup>273</sup> On 9 October 2010 Mr. Askarov and other defendants were brought from Nookan police station to the temporary detention facility in Suzak police station.<sup>274</sup> They were taken to the backyard of the police station and, despite the cold weather, they were forced to remove their clothing and were beaten by a group of police officers wearing black masks. Mr. Askarov was hit on the chest, told to take off his shoes and face the wall, and was then hit on his back and on his head with his shoes.<sup>275</sup> One police officer told Mr. Askarov that "[i]f you did not write against police, you would not be standing here and we would not be beating you."<sup>276</sup> Similarly, the head of the temporary detention facility told Mr. Askarov not to read lectures on human rights.<sup>277</sup>
126. On 23 October 2010, two days before the appeal hearing, the location of the hearings was changed to Tash-Kumyr village, about 80 km northwest of Bazar-Korgon and 100 km northeast of Suzak village. Mr. Askarov and the other defendants were again taken outside to the backyard of the police station and were again stripped and beaten by police officers from the special forces wearing black masks. The officers said that they would beat the defendants so that they would only live until the end of the appeal hearing.<sup>278</sup>
127. Mr. Askarov and the other defendants were then taken to the Tash-Kumyr police station.<sup>279</sup> Upon arrival, most of the defendants were again beaten; however, this time Mr. Askarov was spared. Nevertheless, the head of Tash-Kumyr police station took away the medicine which Mr. Askarov had with him, saying that "no one is allowed to be sick here".<sup>280</sup> The beatings and humiliations, such as goose-stepping, continued daily in Tash-Kumyr.<sup>281</sup>

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<sup>272</sup> Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

<sup>273</sup> See Exhibit 1: Map of Jalal-Abad Oblast.

<sup>274</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 72; Exhibit 79: ICJ Report, para. 114.

<sup>275</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 72; Exhibit 79: ICJ Report, para. 114.

<sup>276</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 72.

<sup>277</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 73.

<sup>278</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 74; Exhibit 79: ICJ Report, para. 115. The ICJ places this warning that they would only live until the end of the appeal during the beating on 9 October, see ICJ Report, para. 114.

<sup>279</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 74; Exhibit 79: ICJ Report, para. 115.

<sup>280</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 75; Exhibit 79: ICJ Report, para. 115.

<sup>281</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 77.

128. For the first three nights in Tash-Kumyr, Mr. Askarov slept on an iron bed without any blanket or mattress and was not permitted to use the bathroom, which led him to stop eating for 17 days. This caused him to again have extreme difficulty with bowel movements.<sup>282</sup>
129. On 25 October 2010, the Jalal-Abad Regional Court commenced its hearing in Tash-Kumyr village. Once more, relatives of the deceased police officers held up posters asking for the death penalty to be given to the defendants, shouted abuse and threats at the defendants, and made death threats against the defence lawyers.<sup>283</sup> They also threatened the judges.<sup>284</sup> During a break in the hearing, the mother of the deceased police officer approached Mr. Toktakunov and said that they were going to hire a killer to kill him. She then poured water over him, a witchcraft ritual widespread in Bazar-Korgon.<sup>285</sup>
130. Mr. Toktakunov argued that there had been a gross violation of the Criminal Procedure Code, the Kyrgyz Constitution and the ICCPR because Mr. Askarov did not have adequate access to a lawyer, had been tortured, and yet the trial judge had failed to initiate any investigation.<sup>286</sup>
131. Defence witnesses again could not appear in the appellate proceedings, due to the dangerous conditions in and around the court.<sup>287</sup> Mr. Askarov's defence asked to call 10 witnesses, including relatives and neighbours of Mr. Askarov who could testify that on 12-13 June he was at his home. When Mr. Toktakunov stated that Ms. Abdirasulova would come to testify in court, the relatives shouted that if she attended, she would not leave alive. Police officers also advised her not to attend because she was likely to be attacked.<sup>288</sup> Another defence lawyer, Ms. Tomina, also reported that her witness was forced to flee the court after being threatened by the deceased police officer's brother.<sup>289</sup> In contrast, more than 20 prosecution witnesses testified,<sup>290</sup> and the judge continued to give directions to prosecution witnesses on how to respond, in order to provide an evidential basis for further charges against Mr. Askarov.<sup>291</sup> Mr. Askarov's defence also sought to call border guards

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<sup>282</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 78.

<sup>283</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 66; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 79; Exhibit 79: ICJ Report, para. 118, 121; Exhibit 86: Human Rights Center 'Citizens against Corruption', "Report of Monitoring of Court Hearings on Appeal, Jalala-Abad Region al Court", 13 November 2010, p. 8, 9, 11; Fergana news, "Kyrgyzstan has begun appeal proceedings in case of A. Askarov. No defence witnesses, victim demand death penalty", 26 October 2010, available at <http://www.fergananews.com/article.php?id=6779>.

<sup>284</sup> Exhibit 79: ICJ Report, para. 121.

<sup>285</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 67; Exhibit 84: Human Rights Centre 'Citizens against corruption', "Monitoring of the court trial of the second instance (appeal)", 25 October 2010.

<sup>286</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 63, 71.

<sup>287</sup> Exhibit 86: Human Rights Center 'Citizens against Corruption', "Report of Monitoring of Court Hearings on Appeal, Jalal-Abad Regional Court", 13 November 2010, p. 8, 9, 11.

<sup>288</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 68; Fergana news, "Kyrgyzstan has begun appeal proceedings in case of A. Askarov. No defence witnesses, victim demand death penalty", 26 October 2010, quoting statement of Frontline.

<sup>289</sup> Exhibit 84: Human Rights Centre 'Citizens against corruption', "Monitoring of the court trial of the second instance (appeal)", 25 October 2010.

<sup>290</sup> Exhibit 79: ICJ Report, para. 120; Exhibit 85: Human Rights Centre 'Citizens against Corruption', "Monitoring of the criminal trial of Azimzhan Askarov and 7 defendants", 3-4 November 2010, available at <http://anticorruption.kg/2012/01/15/monitoring-sudebnogo-processa-po-ugolovnomu-delu-v-otnoshenii-azimzhana-askarova-i-7-podsudimyx/>.

<sup>291</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 79.

and an imam who had witnessed his conversation with the mayor on 12 June, during which Mr. Askarov was alleged to have incited violence and ethnic hatred including kidnapping the mayor. However, the court again refused to invite them as witnesses and rejected attempts to summons potential defence witnesses, on the basis that it was the defence's role to ensure that relevant witnesses attended the court hearing.<sup>292</sup>

132. The appeal hearings continued on 3 November 2010 in Tash-Kumyr. During a break in the hearing, many of the defendants were beaten with batons by police officers and supporters of the deceased police officer.<sup>293</sup>
133. The hearings then moved to Nookan village for 4 November, and the defendants were moved to the temporary detention facility in the Nookan police station. In Nookan, the courtroom was again filled with relatives of the deceased police officer, who continued to threaten and insult the defendants and their lawyers.<sup>294</sup> After one of the hearings in Nookan, on 4 or 6 November 2010, police officers again physically attacked the defendants on their way from the courtroom to be transported to the detention facility, while the defendants were handcuffed. Mr. Askarov was beaten with several blows from behind, and other defendants' faces were covered in blood.<sup>295</sup>
134. On or about 10 November 2010, towards the end of the hearings, Mr. Askarov complained to Mr. Toktakunov about serious problems with his intestine and Mr. Toktakunov applied again for a medical examination.<sup>296</sup> A doctor from Jalal-Abad hospital quickly examined Mr. Askarov in the courtroom and gave him a laxative drug, without providing any further assistance.<sup>297</sup> The doctor said that the intestine problems could be due to prison detention and beatings, and he recommended surgery, but did not write a report to that effect.<sup>298</sup> While being held in the Nookan temporary detention center, Mr. Askarov attempted to hang himself, given the hopelessness of his situation.<sup>299</sup>
135. On 10 November 2010, the appeal court conducted its last session. As in previous sessions, the courtroom was filled with 35 to 40 policemen and relatives of the deceased police officer, along with a handful of journalists and observers. Mr. Toktakunov and other defence lawyers in their closing speeches informed the court that their clients were

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<sup>292</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 65, 68-70; Exhibit 79: ICJ Report, para. 119; Fergana news, "Kyrgyzstan has begun appeal proceedings in case of A. Askarov. No defence witnesses, victim demand death penalty", 26 October 2010.

<sup>293</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 79; Exhibit 79: ICJ Report, para. 124.

<sup>294</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 80; Exhibit 79: ICJ Report, para. 125; Exhibit 85: Human Rights Centre 'Citizens against Corruption', "Monitoring of the criminal trial of Azimzhan Askarov and 7 defendants", 3-4 November 2010, available at <http://anticorruption.kg/2012/01/15/monitoring-sudebnogo-processa-po-ugolovnomu-delu-v-otnoshenii-azimzhana-askarova-i-7-podsudimyx/>.

<sup>295</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 82; Exhibit 79: ICJ Report, para. 126 (the two sources are inconsistent on the exact date of this incident, but are clear that it was after one of the Nookan hearings).

<sup>296</sup> Exhibit 47: Petition to conduct medical examination, 11 November 2010.

<sup>297</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 73; Exhibit 87: Open Society Justice Initiative, Observation of Askarov's appeal hearings, 10 November 2010; Amnesty International, "Prisoner of Conscience on Brink of Death", 12 November 2010, available at <http://www.amnesty.org/en/library/asset/EUR58/021/2010/en/1e047da0-0125-4487-a844-98705bdb4f3d/eur580212010en.html>.

<sup>298</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 73.

<sup>299</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 81.

repeatedly subjected to torture, identified numerous violations of procedure, and argued that the District Court did not uphold basic fair trial standards. Once again, the court did not react to the allegations of torture and ill-treatment by the lawyers.<sup>300</sup>

136. On the evening of 10 November, the Court announced its decision, upholding the verdict of the District Court, and affirming the conviction and sentence against Mr. Askarov and all seven co-defendants.<sup>301</sup> Mr. Askarov's arguments regarding the repeated violation of his rights during the investigation and trial were rejected as "groundless" without further explanation, and the court claimed that the defendants had not presented any evidence of the threats and pressure exerted on them and their witnesses. The specific claim regarding the beatings of Mr. Askarov was similarly rejected, as the Appeal Court held that this had been properly assessed during the investigation.
137. On 11 November 2010, Mr. Askarov was taken to Jalal-Abad detention center along with two other defendants. The head of the center instructed employees to harass and humiliate Mr. Askarov as much as possible: he was stripped, called a "sart" (a derogatory term for ethnic Uzbeks) and kicked repeatedly in the area of his lungs.<sup>302</sup>
138. On 12 November 2010, following domestic and international advocacy efforts on his behalf, Mr. Askarov was transferred to a prison in Bishkek.<sup>303</sup>

#### Supreme Court appeal (November 2010 – December 2011)

139. On 22 November 2010 Mr. Abylakimov filed a supervisory complaint to the Supreme Court against the trial and appeal verdicts,<sup>304</sup> and in January 2011 Mr. Toktakunov filed an additional complaint to this appeal.<sup>305</sup> The appeal argued that flaws in the investigation and prosecution of the case, including the failure to interview any defence witnesses, had led to an unjustified verdict. The inability of the defence to have sufficient or private meetings with Mr. Askarov or to call its own witnesses at trial had also undermined any possibility of a fair trial. Relatives of the deceased police officer had intimidated witnesses and exerted significant psychological pressure in the courtroom. Due to this intimidation, which the judge had failed to control, defence lawyers were unable to call witnesses who could have revealed that Mr. Askarov was not at the bridge when the police officer was killed, contrary to the prosecution's case. The judges also had not investigated Mr. Askarov's injuries, despite consistent requests for them to do so by defence counsel.<sup>306</sup> The other seven co-defendants also appealed to the Supreme Court.

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<sup>300</sup> Exhibit 87: Open Society Justice Initiative, Observation of Askarov's appeal hearings, 10 November 2010; Exhibit 85: Human Rights Centre 'Citizens against Corruption', "Monitoring of the criminal trial of Azimzhan Askarov and 7 defendants", 3-4 November 2010, available at <http://anticorruption.kg/2012/01/15/monitoring-sudebnogo-processa-po-ugolovnomu-delu-v-otnoshenii-azimzhana-askarova-i-7-podsudimyx/>.

<sup>301</sup> Exhibit 48: Verdict of the Jalal-Abad oblast court, 10 November 2010.

<sup>302</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 84; Exhibit 79: ICJ Report, para. 129.

<sup>303</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 75; Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, paras. 85-86; Exhibit 79: ICJ Report, paras. 130-133.

<sup>304</sup> Exhibit 50: Supervisory complaint by Mr. Abylakimov, 22 November 2010.

<sup>305</sup> Exhibit 51: Supervisory complaint by Mr. Toktakunov, January 2011.

<sup>306</sup> Exhibit 50: Supervisory complaint by Mr. Abylakimov, 22 November 2010; Exhibit 51: Supervisory complaint by Mr. Toktakunov, January 2011. See also Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 76.

140. On 3 December 2010, relatives of the deceased police officer also appealed to the Supreme Court, asking the court to impose the death penalty on Mr. Askarov,<sup>307</sup> despite the fact that on 25 June 2007, the death penalty had been removed from the Kyrgyz Criminal Code.
141. On 26 January 2011 the Supreme Court conducted its first hearing in Bishkek. Mr. Askarov and other defendants were not present. Mr. Toktakunov requested that Mr. Askarov attend the hearing; however, the court refused, claiming that Kyrgyz legal procedure did not require defendants to be present during Supreme Court hearings.<sup>308</sup> Mr. Toktaunov later requested that the Constitutional Chamber of the Supreme Court review this rule, arguing that permitting the Supreme Court to decide whether a defendant may be present or not contradicts the principle of equality of arms and the adversarial nature of the judicial process. However, this application was also rejected.<sup>309</sup>
142. Mr. Toktakunov asked the court to acquit Mr. Askarov because the investigation and subsequent prosecution failed to present compelling evidence of his guilt, and due to massive violations of the Kyrgyz Criminal Procedure Code that took place during the investigation and both trials.<sup>310</sup> He also informed the court that Mr. Askarov was tortured and that complaints filed with the prosecutor's offices were not acted upon. The lawyers of the other defendants also said that their clients were severely beaten and subjected to torture, and repeated to the Supreme Court that during the trial and appeal they could not fully exercise their powers as defence counsel due to constant threats and pressure from relatives of the deceased police officer.<sup>311</sup>
143. Following the first Supreme Court hearing, on 27 January 2011 Mr. Toktakunov filed a further application to the Supreme Court regarding the unlawful nature of Mr. Askarov's 5-month detention in police station temporary detention facilities, and the inadequate conditions in those facilities.<sup>312</sup>
144. The Supreme Court resumed its hearing on 8 February 2011. Relatives of the deceased police officer and their supporters were not present in large numbers during the Supreme Court hearings, as they had been at the trial and first appeal. As a result, Mr. Toktakunov and other defence lawyers were able to present evidence of Mr. Askarov's innocence which they had not previously been able to submit. This included 15 notarised witness statements,<sup>313</sup> documents relating to his torture and the attempts to secure an investigation of it, and a written statement by Mr. Askarov.<sup>314</sup> Seven of these witness statements demonstrated that Mr. Askarov was at home on the morning of 13 June 2010, when the

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<sup>307</sup> Exhibit 52: Complaint of the relatives of the deceased police officer to the Supreme Court, 3 December 2010.

<sup>308</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 77.

<sup>309</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 79.

<sup>310</sup> Exhibit 56: Verdict of the Supreme Court, 20 December 2011; Exhibit 87: Open Society Justice Initiative, Observation of Askarov's appeal hearings, 10 November 2010.

<sup>311</sup> Exhibit 56: Verdict of the Supreme Court, 20 December 2011; Exhibit 79: ICJ Report, para. 153 and 157; Exhibit 87: Open Society Justice Initiative, Observation of Askarov's appeal hearings, 10 November 2010.

<sup>312</sup> Exhibit 53: Petition on insufficient number of and conditions in detention facilities, 27 January 2011; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 78; Exhibit 79: ICJ Report, para. 139.

<sup>313</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011; Exhibit 55: Two witness statements of Abdirasulova [REDACTED], Janaury 2011.

<sup>314</sup> Exhibit 4: Statement to Supreme Court by Mr. Askarov, 28 December 2010.

police officer was killed, and not on the bridge.<sup>315</sup> A number of the witnesses also explained that they could not testify during the trial because of intimidation from relatives or police officers, and fears for their own safety:

“Regarding the fact that I was not questioned by the investigation and the court as a witness, nobody asked me for it and the relatives of the murdered policemen did not allow me to visit the investigation and the court voluntarily.”<sup>316</sup>

“During the investigation the police officer said that if we give testimony that Askarov was at home during the riots, and did not participate in these riots, then they will take appropriate measures against us. Being afraid for my life, for my safety, I was forced to keep silence.”<sup>317</sup>

“I am afraid for my life, my safety, but my conscience will not let me keep silence.”<sup>318</sup>

145. One of the other defence lawyers, Mr. Zagibaev, also provided evidence showing that Mr. Askarov was not present at the scene where the incidents took place.<sup>319</sup> Another defence lawyer, Mr. Usmanov, also provided notarized witness statements showing that one of the co-defendants similarly could not have been present on the bridge, as he was in Uzbekistan at a refugee camp on the morning of the killing.<sup>320</sup>
146. At the conclusion of the 8 February hearing, the Supreme Court suspended the proceedings indefinitely. The hearing was subsequently scheduled to resume before the Supreme Court on 29 November 2011, but was further postponed to 20 December 2011.<sup>321</sup>
147. On 20 December 2011, the Supreme Court resumed its hearing.<sup>322</sup> Mr. Askarov was again not permitted to be present, despite the application of Mr. Toktakunov, which the court rejected without providing reasons.<sup>323</sup>
148. The defence lawyers asked that the court examine and admit the additional witness statements which they had gathered, which the court accepted.<sup>324</sup> Mr. Toktakunov argued that Mr. Askarov’s conviction should be overturned, as his guilt had not been proven: the verdicts of the lower courts had been delivered under great emotional pressure; the main witnesses were police officers, with whom Mr. Askarov had very bad relations given his work as a human rights defender; torture had been used and never investigated; and there was insufficient evidence for any sort of conviction, especially given the new witness

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<sup>315</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011 [REDACTED]

<sup>316</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011: [REDACTED]

<sup>317</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011: [REDACTED]

<sup>318</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011: [REDACTED]

<sup>319</sup> Observatory for the Protection of Human Rights Defenders, “Kyrgyzstan: Postponement of the trial against Mr. Azimjan Askarov”, 1 December 2011, available at <http://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2011/12/d21538/>.

<sup>320</sup> Exhibit 79: ICJ Report, para. 161.

<sup>321</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 78; Exhibit 10: Statement of Azimjan Askarov, para. 87; Observatory for the Protection of Human Rights Defenders, “Kyrgyzstan: Postponement of the trial against Mr. Azimjan Askarov”, 1 December 2011, available at <http://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2011/12/d21538/>; Exhibit 79: ICJ Report, para. 145.

<sup>322</sup> See generally, Exhibit 79: ICJ Report, paras. 145-169.

<sup>323</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 79; Exhibit 79: ICJ Report, paras. 151-152.

<sup>324</sup> Exhibit 79: ICJ Report, paras. 135 and 158.

statements submitted.<sup>325</sup> During these submissions, the sister of the deceased police officer, Ms. Gulnora Jusupova, repeatedly tried to interrupt Mr. Toktakunov with emotional remarks and threats, including threats to kill him.<sup>326</sup>

149. The other defence lawyers also made submissions emphasizing the one-sided nature of the investigation, the impossibility of meeting their clients while in pre-trial detention, the threats, pressure and intimidation during the trial, the use of torture during the investigation and beatings during the trial, and that the crowd on the bridge was there to defend their village from attack.<sup>327</sup> The lawyer representing the victims in the case, on the other hand, stated that the guilt of the convicts was proven, that they were leaders of separatist movements who had been waiting for years to take advantage of the sudden weakness of the authorities, and that the verdict should have the effect of stopping separatism.<sup>328</sup>
150. The judges of the Supreme Court did not ask any additional questions of the parties, and after 90 minutes delivered their decision rejecting all the grounds of appeal raised by Mr. Askarov.<sup>329</sup> Despite accepting the applications of the defence and the witness statements, the Supreme Court did not refer to the new witnesses in its decision, and apparently did not take this evidence into account. The Supreme Court also discarded the other arguments of the defence: the Court ruled that Mr. Askarov was arrested on 16 June 2010, denying that he had been detained on 15 June;<sup>330</sup> the Court could not detect any circumstances which might have hindered Mr. Toktakunov in defending Mr. Askarov; and the remaining objections were rejected as “not corresponding to the case file”.<sup>331</sup> It also did not refer to Mr. Toktakunov’s application filed on 27 January 2011 that holding pre-trial detainees in police custody instead of the pre-trial detention centers of the penitentiary service (independent of the police) violated Kyrgyz legislation and constituted unlawful detention (see para. 143, above).<sup>332</sup>
151. The Supreme Court upheld the verdict against Mr. Askarov and left the sentence of life imprisonment against him unchanged. He therefore continues to be detained in prison in Bishkek. The court also upheld the convictions and sentences for six of the co-defendants, although it overturned the conviction on one charge against the seventh and reduced her sentence from 20 years imprisonment to 11 years.

#### Civil judgment against Mr. Askarov

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<sup>325</sup> Exhibit 79: ICJ Report, paras. 157-158.

<sup>326</sup> Exhibit 79: ICJ Report, para. 159.

<sup>327</sup> Exhibit 79: ICJ Report, paras. 160-163.

<sup>328</sup> Exhibit 79: ICJ Report, para. 165.

<sup>329</sup> Exhibit 56: Verdict of the Supreme Court, 20 December 2011; Exhibit 79: ICJ Report, para. 169; Observatory for the Protection of Human Rights Defenders, “Kyrgyzstan: Confirmation of the sentencing of Mr. Azimjan Askarov to life imprisonment”, 22 December 2011, available at <http://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2011/12/d21571/>; Human Rights Watch, “Kyrgyzstan: Verdict Fails Justice”, 20 December 2011, available at <http://www.hrw.org/news/2011/12/20/kyrgyzstan-verdict-fails-justice>. The Supreme Court also upheld the sentences of six of the other seven defendants, including four other life sentences. It reduced the sentence of one defendant from 20 years to 11.

<sup>330</sup> See Exhibit 79: ICJ Report, para. 44.

<sup>331</sup> Exhibit 56: Verdict of the Supreme Court, 20 December 2011.

<sup>332</sup> There are no references to this argument in the Supreme Court decision. The only mention of this argument by the Court was made during the hearing on 20 December 2011, when the Court read out the Ministry of the Interior’s response which confined itself to reciting that conditions in such facilities do not violate human rights and the allegations of torture are not confirmed. See Exhibit 79: ICJ Report, para. 153.

152. On 2 December 2011, the Bazar-Korgon district court upheld a civil claim by relatives of the deceased police officer for moral and material damages from Mr. Askarov and other persons convicted in connection with the criminal case.<sup>333</sup>
153. Evgeniya Krapivina, a lawyer from the Human Rights Center “Citizens Against Corruption”, appealed the decision on the basis that Mr. Askarov did not commit the crime in question. On 21 February 2012, the Jalal-Abad Regional Court confirmed Mr. Askarov’s liability for moral and material damage and ordered that he pay 175,000 soms (approximately USD 3,700) in compensation.<sup>334</sup>

#### **Requests to investigate torture**

154. In addition to raising complaints regarding the torture of Mr. Askarov and the other defendants before the District Court on 6 September 2010, before the Appeal Court on 10 November 2010, and before the Supreme Court on 26 and 27 January 2011 (see paras. 118, 121, 130, 139 and 141, above), Mr. Askarov and his lawyer also attempted to obtain an investigation into his torture from the prosecution authorities, without success.

#### First complaints on torture to Bazar Korgon and Jalal-Abad Prosecutors (22 and 23 June 2010)

155. On 22 June 2010, Mr. Toktakunov filed a request for a forensic medical examination with the prosecutor of Bazar-Korgon, which detailed the injuries that he had observed, that he believed they were the result of torture, and asked that a criminal case be opened.<sup>335</sup>
156. On 23 June 2010, Mr. Toktakunov filed a complaint with the prosecutor of Jalal-Abad oblast regarding prosecutor Turajanova’s obstruction of his actions as defence counsel (para. 69, above). It also requested that the prosecutor initiate criminal proceedings in relation to the torture of Mr. Askarov, pursuant to Article 305-1 of the Criminal Code. Mr. Toktakunov attached copies of the photographs he had taken of the bruises near Mr. Askarov’s kidneys, which evidenced the torture, and noted that he had also reported these injuries to prosecutor Turajanova but that she had refused to take any action.<sup>336</sup> He reiterated this request in his complaint of 25 June 2010.<sup>337</sup>
157. On 28 June 2010, the Jalal-Abad prosecutor refused to investigate allegations that Mr. Askarov was tortured, claiming that the large bruises on Mr. Askarov’s body shown in the photographs were inflicted by his cellmate.<sup>338</sup>

#### Appeal of the prosecutor’s decision to the District Court (14 July 2010)

158. On 14 July 2010, Mr. Toktakunov appealed the Jalal-Abad prosecutor’s decision not to start a criminal investigation into torture allegations to the Jalal-Abad City Court.<sup>339</sup> He

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<sup>333</sup> Exhibit 57: Decision of Bazar-Korgon District Court (civil claim), 2 December 2011.

<sup>334</sup> Exhibit 58: Open Society Justice Initiative correspondence with Evgeniya Krapivina, 3 March 2012. This comprised 50,000 soms in moral damages to the deceased officer’s mother (Sulaimanova), and 100,000 soms in moral damages and 25,000 soms in material damages to his widow (Bechelova).

<sup>335</sup> Exhibit 29: Nurbek Toktakunov’s petition to the Prosecutor of Bazar-Korgon region, 22 June 2010.

<sup>336</sup> Exhibit 31: Nurbek Toktakunov’s petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 84.

<sup>337</sup> Exhibit 32: Addition to Nurbek Toktakunov’s petition to the Prosecutor of Jalal-Abad oblast, 25 June 2010.

<sup>338</sup> Exhibit 35: Letter from Jalal-Abad oblast Prosecutor’s Office, 30 June 2010; Exhibit 34: Decision of Jalal-Abad prosecutor refusing to initiate criminal proceedings, 28 June 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 85; Exhibit 79: ICJ Report, para 74.

also appealed against the decision not to sanction prosecutor Turajanova for preventing him from meeting Mr. Askarov in private and impeding his ability to defend Mr. Askarov by denying him access to the case file. He argued that there was a close link between the torture and the interference with his ability to act as defence counsel, and that the denial of unimpeded access to a client created favorable conditions for police to commit torture.

159. On 26 July 2010, the Jalal-Abad City Court rejected the appeal and upheld the decision of the Jalal-Abad prosecutor's office not to investigate allegations of torture and ill-treatment of Mr. Askarov.<sup>340</sup>

Second complaint on torture to Prosecutor General's Office (20 December 2010)

160. On 20 December 2010, Mr. Toktakunov filed a further complaint with the Prosecutor General of the Kyrgyz Republic, asking her office to initiate criminal proceedings into the torture of Mr. Askarov. Mr. Toktakunov pointed out the inconsistent explanations by the local authorities for the signs of torture on Mr. Askarov's body, and attached photographs of his bruises along with a recent interview in which Mr. Askarov also described in detail his torture and ill-treatment.<sup>341</sup> On 14 January 2011, Mr. Toktakunov reiterated his request that the Prosecutor General initiate a criminal investigation, and attached a diary of Mr. Askarov which also set out his torture and ill-treatment.<sup>342</sup>

161. On 20 January 2011, the Prosecutor General's office refused to initiate criminal proceedings. It relied on the reasoning of the City Court that Mr. Askarov had previously stated that his injuries were caused by a cellmate and that he was not beaten – reasons obtained by the threat of torture (see e.g. paras. 67, 75 and 107, above) and contradicted in the more recent materials attached to Mr. Toktakunov's applications. The Prosecutor's response was issued in the form of a letter and not a formal decision.<sup>343</sup>

Appeal regarding failure to investigate torture (15 March 2011)

162. On 15 March 2011, Mr. Toktakunov filed a complaint with the Pervomaiski District Court in Bishkek, asking it to order the Prosecutor General to issue a formal decision on its refusal to initiate criminal proceedings.<sup>344</sup> On 30 March 2011, the District Court in Bishkek granted the application and ordered the Prosecutor General's office to issue a formal decision.<sup>345</sup>

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<sup>339</sup> Exhibit 36: Nurbek Toktakunov's complaint to the Jalal-Abad city court, 14 July 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 86; Exhibit 79: ICJ Report, para. 78.

<sup>340</sup> Exhibit 37: Decision of Jalal-Abad city court, 26 July 2010; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 87; Exhibit 79: ICJ Report, para. 79.

<sup>341</sup> Exhibit 60: Nurbek Toktakunov's appeal to the Prosecutor General's Office, 20 December 2010; Ulugbek Babakulov, "Story of one Investigation", 16 December 2010, available at [http://www.mk.kg/index.php?option=com\\_content&task=view&id=3474&Itemid=1](http://www.mk.kg/index.php?option=com_content&task=view&id=3474&Itemid=1); Exhibit 79: ICJ Report, para. 136.

<sup>342</sup> Exhibit 61: Petition to Prosecutor General's Office, 14 January 2011; Exhibit 3: Diary of Mr. Askarov; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 89; Exhibit 79: ICJ Report, para. 137.

<sup>343</sup> Exhibit 62: Letter from Prosecutor General's Office, 20 January 2011; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 90; Exhibit 79: ICJ Report, para. 138.

<sup>344</sup> Exhibit 63: Nurbek Toktakunov's complaint to the Pervomaiski district court in Bishkek, 15 March 2011; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 91; Exhibit 79: ICJ Report, para. 140.

<sup>345</sup> Exhibit 64: Decision of Pervomaiski district court in Bishkek, 30 March 2011; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 91; Exhibit 79: ICJ Report, para. 142.

163. On 15 April 2011 Mr. Toktakunov sent a letter asking the Prosecutor General's office to immediately implement the decision of the Pervomaiski District Court and issue a formal decision on the case.<sup>346</sup> He also demanded proper enforcement of the recent Prosecutor General's order "On strengthening the prosecutor's oversight of constitutional guarantee of a ban on the use of torture and other cruel, inhuman or degrading treatment or punishment" issued on 12 April 2011.<sup>347</sup> That order required prosecutors to, among other things, immediately react to complaints alleging torture and to examine the arguments in such complaints carefully.
164. As of October 2012, no formal decision has been received from the Prosecutor General's Office.

### **Medical evidence**

#### Initial Examinations

165. The medical examinations of Mr. Askarov conducted during the investigation, trial and appeal proceedings were inadequate. The examinations lacked independence, and the intimidation of Mr. Askarov meant that he was unable to properly communicate with the doctors regarding his symptoms and their causes.
166. The first examination for which there is any record was conducted on 17 June 2010.<sup>348</sup> As noted above, this examination was ordered to assess whether any injuries corresponded to the date of the killing of the policeman, and prosecutor Turajanova was present during the examination (see para. 56, above). The report records a series of bruises to Mr. Askarov's face, shoulder blade, lumbar region and right forearm. It reported that these injuries could have occurred 1-2 days previously – i.e. on 15 and 16 June, during the initial days of Mr. Askarov's detention – and that they could have resulted from the impact of solid objects or of punches.<sup>349</sup> However, a review of this report by three independent experts (with more than 48 years combined experience in evaluating physical and psychological evidence of torture) concluded that the multiple contusions and hematomas noted by the doctor and shown in photographs taken by Mr. Askarov's lawyer were inconsistent with the explanation provided by prosecutor Turajanova and recorded in the report – that Mr. Askarov had been hit by his cellmate and fallen to the ground – and that Dr. Mamatov had "failed to conduct a forensic evaluation in accordance with international standards".<sup>350</sup>
167. Mr. Askarov received no treatment for these injuries, and Prosecutor Turajanova refused Mr. Toktakunov's requests for a further examination, claiming that the first examination found no signs of torture or ill-treatment (see para. 65, above). At one point during his pre-trial detention, emergency doctors from Bazar-Korgon hospital observed that Mr. Askarov "urgently need[ed] to be hospitalized" and issued a prescription. However, again he received no treatment and the prescribed medication was withheld (see para. 85, above).
168. During the trial, Mr. Toktakunov again attempted to obtain a proper medical examination, but Mr. Askarov was intimidated into refusing.<sup>351</sup> The brief examination by the doctor on 7 September 2010 did, however, confirm that Mr. Askarov had bruises on his body (see

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<sup>346</sup> Exhibit 65: Letter to Prosecutor General's Office, 15 April 2011; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 92; Exhibit 79: ICJ Report, para. 144.

<sup>347</sup> Exhibit 65: Letter to Prosecutor General's Office, 15 April 2011.

<sup>348</sup> Exhibit 68: Report of medical examination conducted on 17 June 2010, 24 June 2010.

<sup>349</sup> Exhibit 68: Report of medical examination conducted on 17 June 2010, 24 June 2010.

<sup>350</sup> Exhibit 74: Physicians for Human Rights Statement on Askarov Forensic Report.

<sup>351</sup> Exhibit 2: Statement of Azimjan Askarov, 5 July 2012, para. 68; Exhibit 79: ICJ Report, para. 103.

paras. 119-120, above). Mr. Toktakunov again sought medical attention for Mr. Askarov during the appeal hearing in November 2010 due to his intestinal problems, and a doctor from Jalal-Abad hospital examined Mr. Askarov. The doctor said that the intestinal problems might be due to beatings in detention and he should be seen by a surgeon, but Mr. Askarov was only provided with a laxative.<sup>352</sup>

169. After his transfer to Bishkek in November 2010, Mr. Askarov was admitted to the prison hospital on 13 November 2010 where he stayed for 12 days. On 19 November 2010, on the basis of an ultrasound examination, Mr. Askarov was diagnosed with swelling of the gallbladder (chronic cholecystitis) and a urinary tract infection (chronic bilateral pyelonephritis in remission).<sup>353</sup> X-rays also revealed consolidated fractures to four ribs (ribs III-VI on the right side).<sup>354</sup> Mr. Askarov received a neurological examination on 25 November 2010 in relation to complaints of dizziness, tinnitus and memory loss, and was diagnosed with arteriosclerosis of the brain. The examinations also record a sense of darkness in Mr. Askarov's left eye.<sup>355</sup>

#### Independent Reviews

170. The first full and independent medical examination of Mr. Askarov for injuries related to his torture was not conducted until 12 October 2011, almost one and a half years after his first complaint of torture. Dr. Elena Khalitova, who specializes in forensic evaluations and is trained in the application of the Istanbul Protocol, conducted the evaluation.<sup>356</sup> This examination, like all subsequent examinations, took place at the penal colony in Bishkek and in the presence of an investigator or prison officer. Nevertheless, Mr. Askarov complained of a range of symptoms, including reduced visual acuity, insomnia, recurrent headaches accompanied by vertigo and bursts before the eyes, darkness in the left eye, and chest and back pain. The preliminary diagnosis concluded that Mr. Askarov's symptoms were potentially the consequence of a closed head injury and post-traumatic stress disorder.<sup>357</sup>
171. On 7 December 2011, at the request of the Open Society Justice Initiative, Mr. Askarov was examined by Dr. Sondra S. Crosby, a U.S.-based consultant to Physicians for Human Rights who has written over 200 affidavits documenting the medical and psychological impacts of torture.<sup>358</sup> Dr. Crosby conducted a clinical interview and physical examination to determine the nature and extent of any injuries and damages resulting from his alleged mistreatment in detention. However, this review was again not conducted in private: a prison guard insisted on being present throughout the evaluation, and refused to permit any photographs to be taken of scars or injuries.<sup>359</sup>

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<sup>352</sup> Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, para. 73.

<sup>353</sup> Exhibit 70: Askarov medical case history #745/0275.

<sup>354</sup> Exhibit 71: Askarov patient medical record card.

<sup>355</sup> Exhibit 70: Askarov medical case history #745/0275.

<sup>356</sup> Exhibit 69: Medical Report by Dr. E.A. Khalitova in Correctional Colony No. 47, Bishkek, 12 October 2011.

<sup>357</sup> Exhibit 69: Medical Report by Dr. E.A. Khalitova in Correctional Colony No. 47, Bishkek, 12 October 2011.

<sup>358</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, para. A.4.

<sup>359</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, part D. Other limitations to Dr. Crosby's evaluation included: timing (the evaluation was limited to a three hour visit); there was no privacy or appropriate space to perform a complete physical examination; and there was no opportunity to perform necessary diagnostic tests.

172. Despite these limitations, Mr. Askarov provided a detailed history of the beatings that he suffered during his initial detention in Bazar-Korgon police station,<sup>360</sup> during transfer between places of detention,<sup>361</sup> and in preparation for his trial and appeal,<sup>362</sup> which were consistent with his other accounts. Dr. Crosby considered that Mr. Askarov gave a “compelling historical account” of repeated head injuries with associated neurological symptoms. He continued to suffer from chronic headaches, memory impairment, decreased visual acuity, balance difficulties, and had both a scar on his head and signs of damage to the third cranial nerve which controls most of the eye’s movements. For Dr. Crosby, these symptoms were “highly consistent” with a traumatic brain injury.<sup>363</sup> Mr. Askarov’s description of immediate loss of vision following blunt head trauma was furthermore consistent with a possible vitreous hemorrhage, retinal detachment or a direct optic nerve injury; his complaints of blood in his urine were highly consistent with blunt trauma injury causing renal contusion (kidney injury); and his back pain and problems with his legs may have been exacerbated by traumatic back injury.<sup>364</sup> She also noted that his description of blunt force trauma (being hit or kicked) to the chest was consistent with the x-rays which revealed fractured ribs.<sup>365</sup>
173. In terms of his mental health evaluation, Mr. Askarov’s clinical presentation revealed symptoms of post-traumatic stress disorder, including nightmares and persistent memory problems in ordinary daily activities, and a major depressive episode including the reported history of suicide attempts.<sup>366</sup>
174. Dr. Crosby concluded that Mr. Askarov “appears to have suffered severe and lasting physical injuries as a result of his arrest and incarceration. His description of acute symptoms, as well as chronic physical and psychological symptoms, his physical examination, and his psychological evaluation, are all highly consistent with his allegations of trauma”<sup>367</sup>.
175. In Dr. Crosby’s medical opinion, Mr. Askarov required: immediate evaluation for his ocular injury and persistent visual loss, traumatic brain injury, hip injury and spinal injury; imaging of his head and lumbosacral spine with MRI and imaging of his right hip with a plain radiograph; an evaluation by an ophthalmologist experienced in the evaluation and treatment of eye trauma; evaluation by a urologist for hematuria and urinary frequency; immediate evaluation for chest pain and shortness of breath, symptoms which are strongly suggestive of coronary artery disease and could be life threatening without immediate treatment; and the resumption of psychiatric treatment. Dr. Crosby made a strong recommendation that Mr. Askarov be moved to a hospital immediately, where his serious health issues could be evaluated and treated appropriately.<sup>368</sup>
176. Dr. Crosby conducted the follow-up evaluation of Mr. Askarov on 17 February 2012. Although again conducted in the presence of a prison guard,<sup>369</sup> Dr. Crosby was permitted to

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<sup>360</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, paras. F.1-5.

<sup>361</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, paras. F.7 and 14.

<sup>362</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, paras. F.12, 15-16.

<sup>363</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, paras. K.5-6.

<sup>364</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, paras. K.5, 7-8.

<sup>365</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, para. K.11.

<sup>366</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, para. G.2.

<sup>367</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, part. M.

<sup>368</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 12 January 2012, part L.

<sup>369</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, para. D.1.

take photographs of a scar on Mr. Askarov's head, which she attached to her report along with photographs previously taken by Mr. Toktakunov of Mr. Askarov's bruises.<sup>370</sup>

177. She concluded that Mr. Askarov's overall health status had deteriorated since her prior evaluation in December 2011, yet he had not been provided with any of the medical evaluations or treatment recommended at that time.<sup>371</sup> Dr. Crosby reaffirmed that Mr. Askarov's history and examination supported the conclusion that he sustained serious physical injuries during his arrest and detention, that he continued to suffer symptoms due to those injuries, and that he also presented symptoms of a major depressive episode and some symptoms of post-traumatic stress disorder.<sup>372</sup> In addition to the prior findings, Dr. Crosby considered the scarring on Mr. Askarov's head, along with his chronic headaches, neurological findings and photographs of bruising, to be "virtually diagnostic with his report of blunt force trauma to the head and left eye"; and other photographs from Mr. Toktakunov to "corroborate Mr. Askarov's history of blunt trauma, specifically to the left eye and flank".<sup>373</sup>
178. Dr. Crosby identified a series of other health concerns of "most urgent concern" which had gone untreated, including exertional chest pain and shortness of breath, which are very concerning for coronary artery disease and require immediate evaluation. Similarly, Mr. Askarov's respiratory complaints needed a full evaluation, as did the conditions in his living environment that may have been exacerbating his symptoms.<sup>374</sup> Dr. Crosby also expressed "grave concern" that Mr. Askarov's back pain and parasthesia in his legs had worsened since December 2011 and still had not been evaluated or treated.<sup>375</sup> Dr. Crosby reiterated her recommendations for a full evaluation and her strong concern that Mr. Askarov should be moved to a hospital immediately, where his serious health issues could be evaluated and treated appropriately.<sup>376</sup>

#### Lack of treatment

179. On 20 February 2012, Mr. Toktakunov sent a written request to the Chairman of the State Penitentiary Service, Mr. Bayzakov, referring to the findings of Dr. Crosby and asking for Mr. Askarov to be moved from the basement cell where he was detained, which was having an ill-effect on his health, and to facilitate a full medical examination. Mr. Tokatuknov offered to secure funds for the medical examination, if necessary.<sup>377</sup> He received no response.
180. To date, Mr. Askarov still has not received adequate treatment for the consequences of his ill-treatment in detention and his other medical problems. While Mr. Askarov does take

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<sup>370</sup> Exhibit 73: Annexes B and C to the Second affidavit of Dr. Sondra S. Crosby, 13 April 2012.

<sup>371</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, paras. F.1 and L.1, 5.

<sup>372</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, paras. L.3, 4, and 6.

<sup>373</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, paras. L.8-9.

<sup>374</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, paras. L.1.

<sup>375</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, paras. L.2 and 10.

<sup>376</sup> Exhibit 73: Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012, part M.

<sup>377</sup> Exhibit 66: Letter to the Chairman of the State Service on Punishment Execution Bayzakov S. K., 20 February 2012.

pain killers and other basic medication, provided by local human rights organizations, he has not undergone the full evaluation strongly recommended by Dr. Crosby.<sup>378</sup>

181. As a result of this failure to provide appropriate treatment, his health continues to deteriorate. During his meeting with Open Society Justice Initiative staff on 5 July 2012, Mr. Askarov said that his feet and ankles feel “like they are in the cold water up to the knees”, and he wears winter boots and sleeps with an electric heater under his bed even during the summer. He has also started to get pain in his arms. No specialized treatment is provided in prison.<sup>379</sup>

#### **International condemnation of violations**

182. A wide range of international organizations have condemned the torture and prosecution of Mr. Askarov, and have linked his persecution with his work protecting human rights.
183. Following his arrest in June 2010, Amnesty International,<sup>380</sup> Human Rights Watch, the Committee to Protect Journalists,<sup>381</sup> and the International Federation for Human Rights (FIDH)<sup>382</sup> called on the Kyrgyz authorities to release Mr. Askarov immediately and unconditionally and ensure that his allegations of torture were investigated and that those responsible were held accountable.<sup>383</sup> The non-governmental organization Frontline also expressed its grave concerns about the physical and psychological security and integrity of Mr. Askarov in prison, and about the safety of his relatives and supporters.<sup>384</sup>
184. In June 2010, Amnesty International declared Mr. Askarov to be a prisoner of conscience,<sup>385</sup> and used his detention, torture and lack of fair trial as an example of the risks faced by Uzbek human rights defenders and lawyers.<sup>386</sup> Also in June 2010, Human Rights Watch wrote to the Prosecutor General, stating that Mr. Askarov’s detention and

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<sup>378</sup> The basic medication that he takes includes cavinton, pentalgin, nitroxoline, undeivit, fastum gel, analgin, volidolum, antigrippin, paracetamol, volidol with glucose, centrum silver, novopasit sedative, perseus sedative, glycine ozone, vitrum vision, kenotol retard, vizin, mindrenat and centrum, duovit, zhivokost, aktovegin, ketanal, kuka, korvalol, piracetam, ambroben syrup, bronkhikum, alfavit, ketanal ointment and capsicum plaster: Statement of Azimjan Askarov, para. 96.

<sup>379</sup> Exhibit 5: Open Society Justice Initiative interview with Azimjan Askarov, 5 July 2012.

<sup>380</sup> Amnesty International, “Further information: Human Rights defender beaten in Custody: Azimzhan Askarov”, 25 June 2010, available at <http://www.amnesty.org/en/library/asset/EUR58/005/2010/en/a875ff0a-6cce-4741-9ad8-4d7ab48d57ce/eur580052010en.html>.

<sup>381</sup> Committee to Protect Journalists, “Kyrgyzstan detains journalists as violence continues”, 23 June 2010, available at <http://www.cpj.org/2010/06/kyrgyzstan-detains-journalists-as-violence-continues.php>.

<sup>382</sup> International Federation for Human Rights, 21 June 2010, available at <http://www.fidh.org/Arbitrary-detention-of-a-human-rights-defender>.

<sup>383</sup> Human Rights Watch, *Kyrgyzstan: Ensure Safety, Due Process for Detained Activist*, 24 June 2010, available at <http://www.hrw.org/en/news/2010/06/23/kyrgyzstan-ensure-safety-due-process-detained-activist>.

<sup>384</sup> Exhibit 82: Frontline Defenders, “Kyrgyzstan: Update – Unfair Trial and Fear of Torture of Human Rights Defender Mr. Azimjan Askarov”, 13 September 2010, available at <http://www.frontlinedefenders.org/node/13314>.

<sup>385</sup> Amnesty International, *Still Waiting for Justice One Year on from the Violence in Southern Kyrgyzstan*, 8 June 2011, available at <http://www.amnesty.org/en/library/asset/EUR58/001/2011/en/6fc18a06-cc97-4dc9-9cf8-95cc62672bfa/eur580012011en.pdf>.

<sup>386</sup> Amnesty International, *Partial Truth and Selective Justice: The Aftermath of the June 2010 Violence in Kyrgyzstan*, 16 December 2010, available at <http://www.amnesty.org/en/library/asset/EUR58/022/2010/en/2e04ab9b-73e6-46a1-98d7-563198e7255e/eur580222010en.pdf>.

prosecution were retaliation by the police for his efforts to document their failure to prevent the violence and looting in June 2010.<sup>387</sup> The Committee to Protect Journalists also linked his arrest, ill-treatment and prosecution with his previous work exposing police abuses,<sup>388</sup> and noted that he was “arrested and jailed for [his] critical reporting ... following a judicial process marred by torture, lack of evidence, and fabricated charges”.<sup>389</sup>

185. Throughout Mr. Askarov’s trial, human rights groups continued to express concerns about his mistreatment and the repeated violations of his fair trial rights. Human Rights Watch stressed its concerns about torture and ill-treatment, and that the trial against Mr. Askarov was unfair, noting that the authorities “failed to guarantee the safety of defence lawyers and witnesses” and that the trial was not justice “but instead it played out like vengeance”.<sup>390</sup> It concluded that the guilty verdict was a “mockery of the defendants’ right to a fair trial, the victims’ right to justice, and Kyrgyzstan’s justice system.”<sup>391</sup> The United States’ Mission to the Organization for Security and Co-operation in Europe reported courtroom intimidation of the court, court officers and defendants, and urged the Kyrgyz government to investigate these reports and accord the defendants their right to a fair legal process.<sup>392</sup> After Mr. Askarov’s conviction, the International Partnership for Human Rights condemned the process and verdict and reiterated that “There are serious grounds to believe that the charges against Askarov are politically motivated and he is being punished for his human rights work.”<sup>393</sup>
186. These concerns continued throughout the appeals process. On 17 November 2010, the Observatory for the Protection of Human Rights Defenders condemned Mr. Askarov’s sentence and the serious irregularities throughout the court hearings, and called for urgent and adequate medical treatment for his alarming health condition.<sup>394</sup> On 8 December 2010, FIDH reiterated its call for the Kyrgyz authorities to launch a new, impartial and independent investigation of the case.<sup>395</sup>

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<sup>387</sup> Human Rights Watch, *Letter to Prosecutor General Ibraev urging the release of Azimjan Askarov*, 17 June 2010, available at <http://www.hrw.org/news/2010/06/17/letter-prosecutor-general-ibraev-urging-release-Azimjan-askarov>.

<sup>388</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 3, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>389</sup> Exhibit 90: Committee to Protect Journalists, “International Press Freedom Awards: Honoring tenacity and courage”, 13 September 2012, available at <http://cpj.org/awards/2012/honoring-tenacity-and-courage.php>

<sup>390</sup> Human Rights Watch, *Kyrgyzstan: Free Human Rights Defender, Ensure Fair Retrial*, 16 September 2010, available at <http://www.hrw.org/news/2010/09/15/kyrgyzstan-free-human-rights-defender-ensure-fair-retrial>.

<sup>391</sup> Human Rights Watch, *Kyrgyzstan: Stop Miscarriage of Justice*, 26 January 2011, available at <http://www.hrw.org/en/news/2011/01/26/kyrgyzstan-stop-miscarriage-justice>

<sup>392</sup> United States Mission to the OSCE, *Statement on the Cases of Azimzhan Askarov, Ulugbek Abdusalomov, and Others in Kyrgyzstan*, 23 September 2010, available at [www.osce.org/pc/71439](http://www.osce.org/pc/71439).

<sup>393</sup> International Partnership for Human Rights, *Appeal to the International Community: Call for a new, fair review of the case of human rights defender Azimzhan Askarov sentenced to life in Kyrgyzstan*, 16 September 2010, available at [http://www.iphronline.org/kyrgyzstan\\_askarov\\_20100916\\_e.html](http://www.iphronline.org/kyrgyzstan_askarov_20100916_e.html).

<sup>394</sup> International Federation for Human Rights, *Life Sentence against Mr. Azimjan Askarov upheld in appeal, amid serious irregularities*, 17 November 2010, available at <http://www.fidh.org/Life-sentence-against-Mr-Azimjan-Askarov-upheld>

<sup>395</sup> International Federation for Human Rights, *FIDH’s President visits Azimjan Askarov in Detention. Kyrgyz authorities must fight effectively against impunity and guarantee the rule of law*, 28 February 2011, available at <http://www.fidh.org/FIDH-s-President-visits-Azimjan-Askarov-in>.

187. The Supreme Court decision upholding Mr. Askarov’s life sentence was likewise met with widespread international opposition. Human Rights Watch considered that the Supreme Court had “utterly failed”, noting that the case was “riddled with blatant flaws from start to finish”.<sup>396</sup> The Committee to Protect Journalists maintained that Mr. Askarov was “denied his right to due process with a flawed prosecution and trial on charges that were blatantly fabricated”.<sup>397</sup> The U.S. Department of State expressed its disappointment with the ruling, observing that the “trial and the subsequent appeal process consistently demonstrated significant breaches of due process”, and that “Askarov and other defendants showed signs of physical abuse and torture, but only police testimony and confessions extracted under duress were permitted as evidence in court”.<sup>398</sup>
188. In July 2012, the UN High Commissioner for Human Rights said that she was “deeply concerned” by Mr. Askarov’s case, which she considered to be one of “two cases which arouse many emblematic concerns in relation to fair trial procedures” in Kyrgyzstan.<sup>399</sup> A June 2012 report from the Committee to Protect Journalists<sup>400</sup> and a September 2012 report from the International Commission of Jurists (ICJ) confirm numerous violations of Mr. Askarov’s rights throughout the process. The ICJ’s detailed, 80-page report, based on its observations of the Supreme Court hearing, numerous interviews and analysis of the case file, concludes that

“In the assessment of the ICJ, Mr Askarov, throughout his arrest, detention and trial, was subject to multiple violations of his internationally protected human rights ... In the view of the ICJ, the many violations identified in this report, taken together, amount to a manifest violation of the right to a fair trial as protected by Article 14 ICCPR, and are likely to give rise to a denial of justice. ... torture and ill-treatment of the defendants allegedly continued up to and during the trial. These allegations have not been properly examined, despite multiple attempts and sufficient *prima facie* evidence to initiate criminal investigations into them. The courts failed to address properly the complaints by Mr Askarov and his codefendants or their lawyers related to their ill-treatment by the police and others.

The court proceedings were conducted in an atmosphere of fear, intimidation, tolerance of hatred and nationalistic threats and attacks. ... The threats to lawyers, witnesses, judges and the constant use of torture against the defendants, seriously undermined an opportunity for the proper administration of justice ... Prolonged severe ill-treatment, attacks against lawyers, fear of witnesses to testify, undermining of the presumption of innocence and failure to ensure equality of arms and the right to an effective defence in court [raise concerns] which the appeals instances, including the Supreme Court, failed to address.”<sup>401</sup>

### **Persecution of ethnic Uzbeks in June 2010 and Pattern of Torture and Impunity**

<sup>396</sup> Human Rights Watch “Kyrgyzstan: Verdict Fails Justice” 20 December 2011, available at <http://www.hrw.org/news/2011/12/20/kyrgyzstan-verdict-fails-justice>.

<sup>397</sup> Committee to Protect Journalists “Kyrgyzstan Supreme Court upholds Askarov sentence” 20 December 2011, available at <http://cpj.org/2011/12/kyrgyzstan-supreme-court-upholds-askarov-sentence.php>.

<sup>398</sup> Exhibit 78: Letter from U.S. Department of State to OSI, February 26, 2012.

<sup>399</sup> Exhibit 75: UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>.

<sup>400</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 3, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>401</sup> Exhibit 79: ICJ Report, paras. 265-266.

189. The detention and mistreatment of Mr. Askarov form part of a pattern of persecution of ethnic Uzbeks, and impunity for offences committed against them, in the aftermath of the June 2010 violence. Although the vast majority of the victims of events in June 2010 were ethnic Uzbeks, the selective investigations and prosecutions which have since been conducted have disproportionately targeted Uzbeks and have resulted in few prosecutions of anyone else. These prosecutions of ethnic Uzbeks have furthermore been marred by serious violations of fair trial and allegations of torture, reflecting the broader pattern of police torture and impunity in the Kyrgyz Republic.
190. The pattern of discriminatory prosecution of Uzbek suspects in the aftermath of the June 2010 violence has been identified by non-governmental organizations such as Human Rights Watch<sup>402</sup> and Amnesty International.<sup>403</sup> It has also been confirmed by the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan (KIC), which was commissioned by then-Kyrgyz President Roza Otunbayeva in 2010 and headed by Kimmo Kiljunen, a member of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe, in its findings published in May 2011. These findings, while a step forwards, do not provide effective accountability as the KIC operated under a limited mandate, without the ability to identify persons suspected of being responsible for violations or require individuals to testify.<sup>404</sup> The Government, furthermore, criticized the Commissions's report, has not implemented its findings and recommendations, and the Kyrgyz Parliament has designated Mr. Kiljunen, the head of the Commission, as *persona non-grata* in Kyrgyzstan.<sup>405</sup>
191. There have been some recent initiatives to address this pattern of discrimination, torture and impunity, including invitations to the UN Special Rapporteur on Torture and to the UN High Commissioner for Human Rights to visit Kyrgyzstan, a recent decline in the number of arbitrary arrests of ethnic Uzbeks, and some steps towards internal investigations and even a small number of prosecutions of police officers,<sup>406</sup> although none connected with Mr. Askarov's case. However, these steps do not change or adequately address the pattern of discriminatory arrests, torture, and fair trial violations against ethnic Uzbeks after the June 2010 violence of which Mr. Askarov's case is emblematic. Indeed, many of these abuses were extensions and intensifications of long-standing patterns of torture and impunity in Kyrgyzstan.

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<sup>402</sup> Human Rights Watch, *Where is the Justice? Interethnic Violence in Southern Kyrgyzstan and its Aftermath*, 16 August 2010, available at <http://www.hrw.org/en/reports/2010/08/16/where-justice-0>; Human Rights Watch, *Distorted Justice Kyrgyzstan's Flawed Investigations and Trials*, 8 June 2011, <http://www.hrw.org/sites/default/files/reports/kyrgyzstan0611webwcover.pdf>.

<sup>403</sup> Amnesty International, *Kyrgyzstan: Dereliction of Duty*, 8 June 2012, available at <http://www.amnesty.org/en/library/info/EUR58/001/2012/en>.

<sup>404</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 7.

<sup>405</sup> Government Response to Report of the Kyrgyzstan Independent Commission of Inquiry, available at [http://www.cmi.fi/images/stories/activities/blacksea/kic/kg\\_comments\\_english\\_final.pdf](http://www.cmi.fi/images/stories/activities/blacksea/kic/kg_comments_english_final.pdf); Radio Free Europe, "Head Of Commission On Kyrgyz Violence Declared Persona Non Grata", 8 November 2012, available at [http://www.rferl.org/content/head\\_of\\_commission\\_on\\_kyrgyz\\_violence\\_declared\\_persona\\_non\\_grata/24205930.html](http://www.rferl.org/content/head_of_commission_on_kyrgyz_violence_declared_persona_non_grata/24205930.html)

<sup>406</sup> Exhibit 75: UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, 8 June 2012, p. 5; UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 34-36.

### Discriminatory prosecutions

192. Ethnic Uzbeks were more than twice as likely to be victims of crimes during the events of June 2010 as ethnic Kyrgyz, and they were almost three times more likely to have been killed. As the UN High Commissioner for Human Rights explained when discussing the 2010 violence, “around 75 percent of those killed were Uzbek, while some 77 percent of those arrested and charged with crimes relating to the violence were also Uzbek. Having three-quarters of the victims and three-quarters of the alleged perpetrators from the same group, during an episode of inter-ethnic violence, simply does not add up.”<sup>407</sup> The UN Special Rapporteur on Torture similarly observed that there is “alarming evidence that many criminal proceedings were marred by widely reported bias against members of certain ethnic minorities.”<sup>408</sup>
193. The KIC reported that of the identified corpses with signs of violence, 276 were Uzbek and 105 were Kyrgyz,<sup>409</sup> yet ethnic Uzbeks were far more likely to be prosecuted for such killings: at the time of its report, 83% of those charged or accused with murder or other homicides were Uzbek and only 9.8% were Kyrgyz.<sup>410</sup> In Osh, murder charges were brought against 24 Uzbek defendants and only 2 Kyrgyz.<sup>411</sup>
194. The same pattern is seen across all of the investigations. The KIC’s report identifies that most of investigations were suspended as no suspect was identified (3,553 of the 5,162 criminal cases opened).<sup>412</sup> The KIC also concluded that despite the prevalence of ethnic Uzbek victims,<sup>413</sup> the vast majority of the cases which were pursued were against ethnic Uzbek suspects: of the 271 persons taken into custody, 230 were Uzbeks;<sup>414</sup> and 79% of the persons who were charged were ethnic Uzbek, while only 18% were Kyrgyz and 3% other.<sup>415</sup>
195. As a result of the disparities in the composition of the victims and the persons prosecuted, the KIC calculated that “Uzbeks are more than 30 times more often accused of murder [by authorities] than the Kyrgyz”.<sup>416</sup>
196. In Bazar-Korgon, despite around 20 people being killed, more than 50 wounded by gunfire, and 205 houses burnt down in the violence (see para. 30, above), the case against Mr. Askarov and his co-defendants was the only one successfully prosecuted.<sup>417</sup>

### Arbitrary Detention and Fair Trial Violations in post-June 2010 proceedings

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<sup>407</sup> Exhibit 75: UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>.

<sup>408</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 53.

<sup>409</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 205.

<sup>410</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 209.

<sup>411</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 207. Murder charges were apparently also brought against a 27<sup>th</sup> defendant whose ethnic identity is not specified.

<sup>412</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 204.

<sup>413</sup> Amnesty International, *Kyrgyzstan: Dereliction of Duty*, 8 June 2012, p. 5, available at <http://www.amnesty.org/en/library/info/EUR58/001/2012/en>.

<sup>414</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 206.

<sup>415</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 208.

<sup>416</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, para. 202.

<sup>417</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 4, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

197. According to Human Rights Watch, the investigation and prosecution of Uzbek suspects were often plagued by serious human rights violations, including arbitrary arrests, torture and ill-treatment of detainees, denial of due process rights to detainees, and harassment of lawyers and relatives of the suspects.<sup>418</sup> Investigation of the June 2010 violence has been used as an excuse, for ulterior purposes, to arbitrarily detain and torture individuals who the police know have no connection to those events.<sup>419</sup> The UN Special Rapporteur on Torture also confirmed “a significant increase of continued arbitrary arrests and detentions [...and] denial of access to a lawyer of one’s choosing” in the post June 2010 period.<sup>420</sup>
198. At trial, defence lawyers representing ethnic Uzbek defendants were subject to improper interference and intimidation,<sup>421</sup> which led them to fear the consequences of, and refrain from, necessary legal advocacy, including questioning prosecution witnesses, calling defence witnesses or submitting arguments.<sup>422</sup> Judges sought to have lawyers defending Uzbek suspects stripped of their right to practice, and security authorities attempted to confiscate their documents.<sup>423</sup>

“Audiences at trials frequently threatened, harassed, intimidated, and even physically attacked ethnic Uzbek defendants, their relatives, lawyers and other observers before, during, and after court sessions. This hostile atmosphere has been particularly evident in high-profile trials, such as murder cases, and particularly in cases concerning the murder of policemen.”<sup>424</sup>

Human Rights Watch explicitly identified the trial of Mr. Askarov as an “illustrative example of these patterns”.<sup>425</sup>

199. Amnesty International noted that some of these fair trial violations resulted from the failure by the authorities to provide a secure environment in which judges could act independently and free from external interference.<sup>426</sup> The UN Special Rapporteur on Torture and Amnesty

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<sup>418</sup> Human Rights Watch, *Where is the Justice? Interethnic Violence in Southern Kyrgyzstan and its Aftermath*, 16 August 2010, p. 49, available at <http://www.hrw.org/en/reports/2010/08/16/where-justice-0>.

<sup>419</sup> In at least nine cases, police arbitrarily detained and tortured ethnic Uzbek men and threatened to charge them in relation to the June 2010 violence if they did not pay large sums: Human Rights Watch, *World Report 2012*.

<sup>420</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 39.

<sup>421</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. iii; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, p. 11, available at <http://www.amnesty.org/en/library/info/EUR58/001/2012/en>.

<sup>422</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 57; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, p. 10.

<sup>423</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 57.

<sup>424</sup> Human Rights Watch, *Distorted Justice Kyrgyzstan’s Flawed Investigations and Trials*, p.37. See also p. 57, noting that defence lawyers have suffered physical violence from sympathisers of the alleged victim in several cases.

<sup>425</sup> Human Rights Watch, *Statement to the Human Rights Council on Kyrgyzstan 24 September 2010*, available at <http://www.hrw.org/news/2010/09/24/statement-kyrgyzstan-human-rights-council>. See UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 55; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, p. 10.

<sup>426</sup> Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, p. 9; see also p. 10.

International have reported that such abuses, including torture, have continued through to the present.<sup>427</sup>

#### Pattern of Torture in Kyrgyzstan

200. During the investigations after the June 2010 violence, Kyrgyz law enforcement authorities also routinely subjected detainees to torture and ill-treatment.<sup>428</sup> The KIC reported that “[t]he evidence presented ... shows that the ill treatment of detainees by authorities in the first place of detention, irrespective of the precise location, has been almost universal.”<sup>429</sup> This consistent torture of predominantly ethnic Uzbek suspects during the investigations after the June 2010 violence represents a continuation and intensification of a pattern of torture in police custody in the Kyrgyz Republic, and a persistent failure to provide any accountability for such torture.
201. This Committee has previously expressed “grave[] concern[] about instances of torture, inhuman treatment and abuse of power by law enforcement officials” in the Kyrgyz Republic.<sup>430</sup> Shortly before the June 2010 violence, Amnesty International noted that “torture and other ill-treatment remained widespread and is practiced with impunity ... beatings by law enforcement officers appear to continue to be routine”;<sup>431</sup> and Human Rights Watch called attention to the fact that “torture and ill-treatment remain rampant.”<sup>432</sup>
202. The UN Special Rapporteur on Torture, during his mission to Kyrgyzstan in December 2011, noted that he “received numerous accounts and eyewitness testimonies suggesting that torture and ill-treatment had been historically pervasive in the law enforcement sector.”<sup>433</sup> He identified patterns of torture by police officers after arrest and during the first hours of informal interrogation, including asphyxiation with plastic bags, punches and beatings with truncheons, and the threat of rape. Police stations and temporary detention facilities were among the locations most often cited as where the ill-treatment occurred.<sup>434</sup>
203. The UN Special Rapporteur reported that the practice of torture “has been intensified by the turbulence of the past two years with the ousting of President Bakiev in April 2010, followed by the violence that took place in the South in June 2010. During the violence in June 2010 and its aftermath, reports consistently highlighted the frequency and gravity of arbitrary detention, torture and ill-treatment by law enforcement bodies.”<sup>435</sup> The UN High Commission for Human Rights received 68 complaints of torture in the context of

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<sup>427</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 55; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, p. 5.

<sup>428</sup> See Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56; Human Rights Watch, *Distorted Justice Kyrgyzstan’s Flawed Investigations and Trials*, p. 27.

<sup>429</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56.

<sup>430</sup> UNHRC, *Concluding observations on Kyrgyz Republic* (2000), UN Doc. CCPR/CO/69/KGZ, para. 7.

<sup>431</sup> Summary prepared by OHCHR in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, UN Doc. A/HRC/WG.6/8/KGZ/3, para 17.

<sup>432</sup> Human Rights Watch, *World Report 2010, Kyrgyzstan*, available at <http://www.hrw.org/en/node/87615>

<sup>433</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 37; see also paras. 39 and 53.

<sup>434</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 38.

<sup>435</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 37

investigations of the June 2010 violence, and stated that “[t]his is believed to be only a fraction of the real total.”<sup>436</sup>

204. In its 2011 report, Human Rights Watch specified that the “government’s investigation into the violence has included serious violations of Kyrgyz and international law. Arbitrary arrests and extortion were widespread, and there is credible evidence in numerous cases that detainees were ill-treated and tortured.”<sup>437</sup> Its 2012 report similarly noted that “[t]orture and arbitrary detentions in the context of investigations into the June 2010 violence are rampant and go largely unpunished” and that “[e]thnic Uzbeks in the south are particularly vulnerable to police torture.”<sup>438</sup> The KIC confirmed that the main methods of ill-treatment during this period again included many of those suffered by Mr. Askarov: prolonged, severe beatings including with the handles of firearms; punching and kicking; and placing a plastic bag over the head of the detainee.<sup>439</sup>
205. The European Court of Human Rights recently examined the risk of torture facing ethnic Uzbek suspects in southern Kyrgyzstan. It recounted in detail the reports of abuse and discriminatory prosecutions targeted at the ethnic Uzbek population following the violence of June 2010.<sup>440</sup> Based on this, the Court found that:

“it follows from the evidence before the Court that the situation in the south of the country is characterised by torture and other ill-treatment of ethnic Uzbeks by law-enforcement officers, which increased in the aftermath of the June 2010 events and has remained widespread and rampant, being aggravated by the impunity of law-enforcement officers. . . . Despite the acknowledgment of the problem and measures taken by the country central authority, in particular the Prosecutor General, their efforts have so far been insufficient to change the situation”<sup>441</sup>

Based on this “attested widespread and routine use of torture and other ill-treatment by law-enforcement bodies in the southern part of Kyrgyzstan in respect of members of the Uzbek community”, the Court held that the extradition of an ethnic-Uzbek suspect to Kyrgyzstan where he would be detained and prosecuted in Jalal-Abad province would violate Article 3 of the European Convention (the prohibition of torture).<sup>442</sup>

#### Failure to Prevent Torture and Poor Detention Conditions

206. In December 2011, the UN Special Rapporteur on Torture highlighted the lack of safeguards against torture in Kyrgyzstan, including “non-compliance with regulations requiring the prompt registration of persons arrested, failure to notify family members immediately following an arrest, delayed independent medical examinations and the complicity of State appointed lawyers with investigators who offer a purely token presence and who are seen as being formally present to rubberstamp the decisions of the

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<sup>436</sup> Exhibit 75: UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>

<sup>437</sup> Human Rights Watch, *World Report 2011, Kyrgyzstan*, available at <http://www.hrw.org/en/world-report-2011/kyrgyzstan>.

<sup>438</sup> Human Rights Watch, *World Report 2012, Kyrgyzstan*, available at <http://www.hrw.org/en/world-report-2012/kyrgyzstan>.

<sup>439</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56.

<sup>440</sup> *Makhmudzhan Ergashev v. Russia*, ECtHR, Judgment of 16 October 2012, paras. 35-46.

<sup>441</sup> *Ibid.*, para. 72.

<sup>442</sup> *Ibid.*, paras. 76-77.

investigator.”<sup>443</sup> A particular problem was “[t]he irregular – but almost routine – procedure of unregistered arrest [which] makes it impossible to establish whether the three-hour maximum term for the first stage of deprivation of liberty is observed”, as a result of which torture has generally taken place by the time the detainee first saw even the duty lawyer.<sup>444</sup>

207. The channels available for detainees to complain of torture “are marred by allegations of lack of independence and ineffectiveness”, and the Special Rapporteur “believes that most detainees refrain from filing complaints with prosecutors or inquiry officers during their monitoring visits out of fear of reprisals”.<sup>445</sup> Despite prosecutorial oversight nominally focusing on detention conditions rather than torture and ill-treatment,<sup>446</sup> those conditions are also inadequate: the Special Rapporteur confirms that detainees are often confined to poorly illuminated and poorly ventilated cells for 23 hours per day, given one serving of inadequate food per day, and permitted to use the toilet on only one or two scheduled times per day.<sup>447</sup> Inmates are also frequently detained in temporary detention facilities for extended periods, despite the legal requirement that they be transferred to a pre-trial detention facility after 48 hours.<sup>448</sup>
208. The requirements for regular medical examinations of detainees are not implemented in practice,<sup>449</sup> and the doctors responsible for documenting torture generally lack independence from the authorities in whose custody the alleged ill-treatment took place.<sup>450</sup> There is also no clear procedure for courts to follow when faced with an allegation that evidence was obtained by torture, and as a result, the rule excluding evidence based on torture is not adequately applied.<sup>451</sup>

#### Failure to Investigate Torture and Lack of Judicial Independence

209. Kyrgyz authorities also consistently fail to investigate allegations of torture. In 2000, this Committee noted the lack of independent investigation of such allegations, recommending that “[c]omplaints about torture and other abuses by officials should be investigated by independent bodies”.<sup>452</sup> No such steps have been taken. According to information provided by the Prosecutor General’s Office, as at December 2011, there have been no convictions

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<sup>443</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 40.

<sup>444</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 44-45.

<sup>445</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 27-28.

<sup>446</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 28.

<sup>447</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 60.

<sup>448</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 61.

<sup>449</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 23.

<sup>450</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 51 and 63.

<sup>451</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 20; “The Special Rapporteur was not able to obtain information on any instance when judges and prosecutors are known to have ordered medical examinations at their own initiative in response to allegations or signs of abuse”, para. 50.

<sup>452</sup> UNHRC, *Concluding observations on Kyrgyz Republic* (2000), UN Doc. CCPR/CO/69/KGZ, para. 7

for torture and very few prosecutions (if any) since article 305-1 (torture) was introduced into the Criminal Code in 2003.<sup>453</sup>

210. In September 2005, the UN Special Rapporteur on the Independence of Judges visited Kyrgyzstan. He expressed concern “about a general failure to ensure prompt, impartial and full investigations into allegations of torture”;<sup>454</sup> concluded that “the various limitations on the independence of the judiciary ... mean that judges regularly conduct proceedings in favour of the prosecution”;<sup>455</sup> and confirmed that the prosecutor’s offices “play an extremely dominant role in the administration of justice” and “exercise supervisory powers and exert disproportionate influence over the pretrial and trial stages of judicial proceedings.”<sup>456</sup>
211. Many of these recommendations and concerns were echoed during the Universal Periodic Review (UPR) process by the Human Rights Council in 2010. Kyrgyzstan received recommendations to “[s]trengthen its safeguards against torture”;<sup>457</sup> to “ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture”;<sup>458</sup> and to “[e]stablish constitutional reforms that will guarantee the separation of powers, the rule of law, the independence of the judiciary.”<sup>459</sup>
212. During his December 2011 mission to Kyrgyzstan, the Special Rapporteur on Torture concluded that “[t]he absence of prompt, impartial and full investigations into allegations of torture and ill-treatment makes such acts a crime that goes unpunished. ... Cases of torture are practically not addressed and perpetrators are not punished”.<sup>460</sup> This failure to take any meaningful steps to investigate police torture was a feature of the aftermath of the June 2010 violence.<sup>461</sup> In most of the cases the Kyrgyz authorities failed to investigate and prosecute allegations of torture: “Despite numerous complaints and, in some cases, overwhelming evidence, Kyrgyz authorities have failed to meet their international obligation to promptly and thoroughly investigate and prosecute incidents of torture connected to the June violence.”<sup>462</sup> The Special Rapporteur on Torture expressed his concern with regard to the “serious lack of sufficiently speedy, thorough and impartial investigations into allegations of torture and ill-treatment, as well as a lack of prosecution of alleged law enforcement officials.”<sup>463</sup>

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<sup>453</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 54.

<sup>454</sup> UN Special Rapporteur on the independence of judges and lawyers, *Report on Mission to Kyrgyzstan*, 18-22 September and 1 October 2005, UN Doc. E/CN.4/2006/52/Add.3, para. 29.

<sup>455</sup> *Ibid.*, para. 51.

<sup>456</sup> *Ibid.*, at page 2; see also para. 76.

<sup>457</sup> Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, UN Doc. A/HRC/15/2, para 76.53.

<sup>458</sup> *Ibid.*, para. 76.54.

<sup>459</sup> *Ibid.*, para. 76.4.

<sup>460</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 77.

<sup>461</sup> Amnesty International, *Kyrgyzstan: Dereliction of Duty*, June 2012, pp. 11-12.

<sup>462</sup> Human Rights Watch, *Distorted Justice Kyrgyzstan’s Flawed Investigations and Trials*, p. 27.

<sup>463</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 55 and 56.

213. Courts often ignored statements of defendants that their confessions were obtained through ill-treatment or torture, even where they showed visible signs of ill-treatment,<sup>464</sup> or courts have actively silenced defendants who attempted to complain of their abuse.<sup>465</sup> The Special Rapporteur on Torture cited the 20 December 2011 decision by the Supreme Court to turn down the appeal of Azimjan Askarov and to confirm his life sentence, as an “example of the highest judicial body’s failure to act on allegations of torture and ill-treatment.”<sup>466</sup>

## **VI. ADMISSIBILITY**

214. This communication satisfies the requirements for admissibility under Article 5 of the first Optional Protocol to the ICCPR because (A) the violations fall within the jurisdiction of the Committee, (B) the violations have not been submitted to any other international forum, and (C) Mr. Askarov has exhausted all available and effective domestic remedies as he repeatedly complained of his torture without any relief, appealed the violations of his pre-trial and trial rights to the Supreme Court, and any further remedies would be ineffective and are unduly delayed.

### **A. Jurisdiction**

215. The Kyrgyz Republic acceded to the ICCPR and the first Optional Protocol to the ICCPR on 7 October 1994. The violations which are the subject of this communication commenced in June 2010. This communication therefore falls within the temporal jurisdiction of the Committee.

### **B. No other international complaint**

216. No complaint has been submitted to any other procedure of international investigation or settlement regarding the torture of Mr. Askarov, his arbitrary detention and unfair trial, and the associated violations raised in this communication. This communication therefore satisfies the admissibility requirement in Article 5(2)(a) of the first Optional Protocol to the ICCPR.

### **C. Exhaustion of domestic remedies**

217. As outlined above, Mr. Askarov has exhausted domestic remedies in this case, satisfying the requirement for the exhaustion of domestic remedies in Article 5(2)(b) of the first Optional Protocol. He repeatedly complained of the torture that he suffered to the prosecutors, to the ombudsman and to the courts without any effective response. He has also appealed against the violations of his rights during his pre-trial detention and trial, including to the Supreme Court, without any success. Any other domestic civil or disciplinary remedies in this case are unavailable or are ineffective given the nature of the violations.

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<sup>464</sup> Exhibit 76: Report of the Kyrgyzstan Independent Commission of Inquiry, p. 56; Human Rights Watch, *Distorted Justice Kyrgyzstan’s Flawed Investigations and Trials*, p. 34; Human Rights Watch, *World Report 2012*.

<sup>465</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 48 and 52.

<sup>466</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para 55.

218. An applicant is required to exhaust those domestic remedies which are available and effective.<sup>467</sup> The Committee has clarified that this refers “primarily to judicial remedies”<sup>468</sup> which must offer “a reasonable prospect of redress”.<sup>469</sup> As the Committee has explained, “if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective.”<sup>470</sup>

#### Torture Claims Exhausted

219. Mr. Askarov and his lawyer complained of the torture and ill-treatment that he had suffered to each of the District, Appeal and Supreme Courts (see paras. 118, 121, 130, 139 and 141, above). However, those courts refused to take any action on those complaints, rejecting the complaints without any investigation based on a statement which Mr. Askarov made under threat of further torture in police detention that he had suffered the injuries some other way. As this Committee has previously held, once a complaint of torture or ill-treatment is lodged, including before a court during trial, the state is obliged to investigate and the case will be admissible where it fails to do so.<sup>471</sup> The UN Special Rapporteur on Torture cited the Supreme Court’s decision to uphold Mr. Askarov’s conviction despite the claims of torture as an “example of the highest judicial body’s failure to act on allegations of torture and ill-treatment”.<sup>472</sup>
220. In addition, Mr. Askarov’s lawyer complained directly to both the Jalal-Abad oblast prosecutor and the Prosecutor General’s office regarding the torture of Mr. Askarov, and both refused to investigate the allegations (see paras. 155-161, above). He appealed the refusal to investigate by the Jalal-Abad oblast prosecutor; however the court upheld the decision. He was unable to appeal the refusal of the Prosecutor General’s office because it presented its refusal to investigate in a letter, rather than a formal decision, and it has failed to comply with a court order to issue a formal decision (see paras. 162-164, above).
221. Mr. Askarov’s lawyer also drew his torture to the attention of the Kyrgyz ombudsman. Although the ombudsman sent three employees to take a statement from Mr. Askarov (see paras. 68, above), this did not lead to an investigation or any other domestic remedy.
222. Mr. Askarov’s failure at particular points to pursue complaints about his torture while he was in the custody of the police authorities who were inflicting that abuse, and his

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<sup>467</sup> “exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available” – UNHRC, Annual Report 1984, para. 584 (quoted in Moller and de Zayas, *United Nations Human Rights Committee Case Law 1977-2008* (Kehl am Rhein : N.P. Engel Verlag, 2009), p. 112)

<sup>468</sup> *R.T. v. France*, UNHRC, Views of 30 March 1989, UN Doc. CCPR/C/35/D/262/1987, para. 7.4; *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, para. 5.2; *Mariam Sankara et al. v. Burkina Faso*, UNHRC, Views of 28 March 2006, UN Doc. CCPR/C/60/D/1159/2003, para. 6.4

<sup>469</sup> *Patiño v. Panama*, UNHRC, Views of 21 October 1994, UN Doc. CCPR/C/52/D/437/1990, para. 5.2; *Potter v. NZ*, UNHRC, Views of 28 July 1997, UN Doc. CCPR/C/60/D/632/95, para. 6.3. See also *Torres Ramirez v. Uruguay*, UNHRC, Views of 8 April 1980, UN Doc. CCPR/C/10/D/4/1977, para. 5 (requiring that the state demonstrate “a reasonable prospect that such remedies would be effective”).

<sup>470</sup> *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, para. 5.2; *Coronel et al v. Colombia*, UNHRC, Views of 24 October 2002, UN Doc. CCPR/C/76/D/778/1997, para. 6.2.

<sup>471</sup> See e.g. *Agabekova v. Uzbekistan*, UNHRC, Views of 3 May 2007, UN Doc. CCPR/C/89/D/1071/2002, paras. 6.5 and 7.2.

<sup>472</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 49.

explanation for his injuries during that time which the Kyrgyz government relies on for failing to investigate, namely that his injuries were caused by his cellmates, were a result of threats to himself and others (see e.g. paras. 67, 75 and 107, above). This Committee does not require applicants to exhaust domestic remedies where to do so would place the applicant, or their family, in danger.<sup>473</sup> Once the risk of continued torture or retaliation was reduced by Mr. Askarov's transfer to Bishkek, he maintained a consistent account of his torture and through his lawyer pursued complaints to the Prosecutor General and the Supreme Court. Mr. Askarov has therefore exhausted domestic remedies regarding his torture.

#### Detention and Fair Trial Claims Exhausted

223. Mr. Askarov has also exhausted domestic remedies regarding the violation of his rights during his pre-trial detention, trial and appeal. Shortly after he was engaged, his lawyer filed a complaint with the Jalal-Abad oblast prosecutor regarding the interference with Mr. Askarov's right of access to counsel and his ability to prepare his defence. This complaint was rejected, and a judicial appeal against this was denied (see paras. 69 and 156-159, above). Many of the violations of Mr. Askarov's fair trial rights took place before the district court, which failed to take any steps to secure Mr. Askarov's rights. Mr. Askarov's lawyer raised the violations of his pre-trial and trial rights on appeal in both his written application and his closing submissions. However, the Regional Court dismissed these arguments as "unfounded" or "groundless" (see paras. 124, 130 and 136, above).
224. Mr. Askarov's lawyer presented further arguments on these violations before the Supreme Court. He made detailed arguments as to his inability to meet with Mr. Askarov or access the case file, his inability to call witnesses or make submissions given the hostile atmosphere in the courtroom, the lack of impartiality of the lower courts, and a separate submission on the conditions of Mr. Askarov's pre-trial detention. Again, the court simply stated that lawyer's applications were not confirmed by the case file and claimed that it could not detect any circumstance which might have hindered Mr. Askarov's defence (see para. 150 above).
225. Mr. Askarov's lawyer also requested that he be transferred from police detention, arguing that he should be detained in pre-trial detention facilities under the authority of the Ministry of Justice, and subsequently asked the Supreme Court to refer the question of the absence of proper pre-trial detention facilities to the Constitutional Chamber of the Supreme Court (see para. 141, above). Both applications were rejected. Mr. Askarov has therefore exhausted domestic remedies in relation to the violation of his rights during his pre-trial detention, trial and appeal.

#### Other remedies are ineffective or unavailable in this case

226. Mr. Askarov is not required to pursue other remedies such as civil or disciplinary proceedings. In light of the gravity of the violations, only a criminal investigation and prosecution will suffice for the torture which Mr. Askarov suffered and the severity of the violations of his pre-trial and trial rights. Under these circumstances, administrative or disciplinary measures cannot be considered adequate or effective for such serious violations.

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<sup>473</sup> *Phillip v. Trinidad and Tobago*, UNHRC, Views of 20 October 1998, CCPR/C/64/D/594/1992, para. 6.4; *Randolph v. Togo*, UNHRC, Views of 15 December 2003, UN Doc. CCPR/C/79/D/910/2000, paras. 2.5, 5.8 and 8.6; *El Alwani v. Libya*, UNHRC, Views of 11 July 2007, UN Doc. CCPR/C/90/D/1295/2004, paras. 3.1 and 5.2.

227. The repeated refusal to investigate and bring charges against the officials responsible for his torture prevents Mr. Askarov from pursuing any civil remedies, which under Kyrgyz law can only be brought after a criminal court has convicted the perpetrators. Such remedies are therefore not available in this case; and even if they were they could not be considered an adequate or effective remedy.
228. As a result, this communication is admissible before the Committee.

## VII. VIOLATIONS OF THE ICCPR

229. The Kyrgyz Republic has violated the ICCPR as follows:
- *A. Torture.* The treatment inflicted upon Mr. Askarov by police officers in custody, for the purpose of obtaining a false confession, for the purpose of discrimination on the grounds of Mr. Askarov's ethnic origin, and as punishment for reporting police abuse, amounts to torture in violation of Article 7 of the ICCPR. This torture was exacerbated by the conditions in which Mr. Askarov was detained and the failure to provide medical treatment, in further violation of Article 7.
  - *B. Lack of Safeguards.* The Kyrgyz Republic failed to take measures to protect Mr. Askarov from torture, in violation of Article 7 of the ICCPR in conjunction with Article 2(3).
  - *C. Failure to Conduct an Effective Investigation.* The Kyrgyz Republic failed to conduct an impartial, effective and thorough investigation into the repeated torture of Mr. Askarov, in violation of Article 7 of the ICCPR in conjunction with Article 2(3).
  - *D. Failure to Provide Redress.* The Kyrgyz Republic failed to provide access to effective remedies for the torture of Mr. Askarov, including compensation and rehabilitation, in further violation of Article 7 in conjunction with Article 2(3).
  - *E. Arbitrary and Unlawful Detention.* Mr. Askarov's detention was not in accordance with domestic law, had no legitimate purpose, and was motivated by his role as a human rights defender and his ethnicity. It was therefore unlawful and arbitrary in violation of Article 9 of the ICCPR, as well as the prohibition against discrimination in Articles 2 and 26.
  - *F. Inhumane Conditions of Detention.* The conditions in which Mr. Askarov was detained, in particular at Bazar-Korgon police station, were inhumane, in violation of Article 10 of the ICCPR.
  - *G. Violation of Pre-Trial Rights.* Mr. Askarov was denied adequate time and facilities to prepare his defence, particularly the ability to communicate with his counsel, and public officials violated the presumption of innocence by making statements that he was guilty, in contravention of Article 14 of the ICCPR.
  - *H. Violation of Fair Trial Rights.* The lack of independence and impartiality in Mr. Askarov's trial and subsequent appeal process and the atmosphere of intimidation both at trial and on appeal violated his rights to a fair hearing. He was unable to effectively call or cross-examine witnesses, and was not present at the first potentially meaningful review of his conviction by the Supreme Court, in further violation of Article 14 of the ICCPR.
  - *I. Violation of Mr. Askarov's Rights as a Human Rights Defender.* The authorities detained and tortured Mr. Askarov, and denied him a fair trial, in large part because of

his work as a human rights defender in the Kyrgyz Republic, in violation of Articles 9 and 19 of the ICCPR.

#### **A. Torture of Mr Askarov**

230. The repeated beatings of Mr. Askarov by police officers from his detention on 15 June 2010 until the appeal hearing in early November 2010 amount to torture contrary to Article 7 of the ICCPR.
231. The prohibition of torture and cruel and inhuman treatment is absolute. This Committee has made it clear that “Article 7 allows of no limitation”.<sup>474</sup> The assessment of what amounts to torture “depends on all the circumstances of the case, such as the duration and manner of the treatment, [and] its physical or mental effects”.<sup>475</sup> As part of this assessment, repeated beatings in custody have been found to constitute torture or cruel and inhuman treatment under Article 7.<sup>476</sup> Torture must be inflicted for a specific purpose, which might be to extract a confession, as punishment or retribution, to intimidate or coerce the victim (or another person), or where the abuse is based on any form of discrimination.<sup>477</sup>
232. The denial of medical treatment for injuries inflicted by torture can also constitute a separate violation of Article 7, in addition to being a violation of Article 10.<sup>478</sup> Indeed, where a detainee is suffering serious pain over an extended period and medical attention is denied, then this may constitute a violation of Article 7 even if the origin of the suffering is unrelated to any torture or mistreatment.<sup>479</sup> Poor conditions of detention can also contribute to a violation of Article 7, as well as constituting violations of Article 10.<sup>480</sup>
233. This Committee has held that when a person alleges they have been tortured in custody, the state will often have total control of access to the evidence, and the burden of proof cannot rest on the author of the communication alone.<sup>481</sup> Rather, the burden will shift to the government to provide a satisfactory and plausible explanation supported by evidence.

#### The Treatment of Mr. Askarov Amounts to Torture

234. During the first day of his detention, prior to his registration, Mr. Askarov was subjected to repeated beatings, where police officers inflicted severe physical pain on him (see paras.

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<sup>474</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, paras. 3, 5.

<sup>475</sup> *Vuolanne v. Finland*, UNHRC, Views of 7 April 1989, UN Doc. CCPR/C/35/D/265/1987, para. 9.2. See also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 4 – “the distinctions depend on the nature, purpose and severity of the treatment.”

<sup>476</sup> *Bailey v. Jamaica*, UNHRC Views of 31 March 1993, UN Doc. CCPR/C/47/D/334/1988, para. 9.2 – 9.3; *Linton v. Jamaica*, UNHRC, Views of 22 October 1992, UN Doc. CCPR/C/46/D/255/1987, para. 8.5.

<sup>477</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Article 1.

<sup>478</sup> *Mika Miha v. Equatorial Guinea*, UNHRC, Views of 8 July 1994, UN Doc. CCPR/C/51/D/414/1990, paras. 2.3-2.6, 6.4; see also *Mulezi v. Democratic Republic of the Congo*, UNHRC, Views of 8 July 2004, UN Doc. CCPR/C/81/D/962/2001, para. 2.4, 5.3; *Thomas v. Jamaica*, UNHRC, Views of 19 October 1993, UN Doc. CCPR/C/49/D/321/1988, para. 9.2.

<sup>479</sup> *Rouse v. Philippines*, UNHRC, Views of 25 July 2005, UN Doc. CCPR/C/84/D/1089/2002, para. 7.8.

<sup>480</sup> See e.g. *Brown v. Jamaica*, UNHRC, Views of 23 March 1999, UN Doc. CCPR/C/44/D/271/1988, paras. 3.9, 6.13; *Smith and Stewart v. Jamaica*, Views of 12 May 1999, UN Doc. CCPR/C/65/D/668/1995, para. 7.5.

<sup>481</sup> *Krasnova v. Kyrgyzstan*, UNHRC, Views of 29 March 2011, UN Doc. CCPR/C/101/D/1402/2005, para. 8.3.

36-37 and 39, above). These beatings were combined with other mistreatment designed to degrade him, including being forced to collect officers' cigarette butts at their feet and being ordered around and kicked by a 10 year old boy, all while being videotaped. The police officers also inflicted severe mental suffering by threatening to rape Mr. Askarov's wife and daughter in front of him.

235. After the registration of detention, Mr. Askarov continued to be repeatedly beaten during interrogations. The prosecutor made it clear that the beatings – “work[ing] on him” – were designed to obtain information about leaders of the Uzbek community and the alleged “distribution of weapons” (see paras. 43-44 and 47-48, above). The beatings were repeated at the time of Mr. Askarov's court hearings, particularly after the first day of hearings on 2 September 2010 and during the preparation for the appeal on 9 and 23 October 2010 (see para. 101-106 and 125-126, above). The beatings were calculated to maximise the psychological impact on Mr. Askarov, as he and his fellow prisoners were often handcuffed or stripped of their clothing and the police officers often wore masks.
236. The beatings were severe: Mr. Askarov was repeatedly struck and kicked to the point of losing consciousness, he was dealt vicious blows with the handle of a pistol and a large water bottle, and he had a plastic bag put over his head. The beatings that Mr. Askarov endured caused bleeding from his head and blood to froth from his mouth, damage to his eye and lasting pain and damage to his kidneys (see e.g. paras. 37, 43, 48 and 85, above). In addition to the physical injuries, the ill-treatment caused long-lasting psychological damage. Mr. Askarov also showed signs of Post Traumatic Stress Disorder (PTSD), in December 2011. The most common psychiatric diagnosis among torture survivors is PTSD, and torture survivors have elevated rates of PTSD.<sup>482</sup> Mr. Askarov reported that his psychological symptoms began after his arrest and detention.
237. The beatings of Mr. Askarov were not random, but were inflicted for a number of specific purposes. Mr. Askarov was tortured as a result of discrimination against him as an ethnic Uzbek in the aftermath of the ethnic violence of June 2010 (see paras. 189 - 196 above; paras. 296 - 299 below). He was also beaten in retaliation for his work exposing abuses by the Bazar-Korgon police over many years (see paras. 300 - 302 and 389 - 400 below). In the early stages of his detention, he was beaten to obtain evidence against prominent members of the Uzbek community (see para. 303 below). And later, the beatings were designed to punish him for speaking out as his trial and intimidate him into remaining silent at trial and regarding the abuses inflicted upon him (see para. 264 below).

#### There is Ample Evidence to Make a Finding of Torture

238. Mr. Askarov has provided a detailed account of the severity and impact of the injuries inflicted upon him, specifying what was done to him as well as the particular locations of the torture and the identity of his assailants when known. During his first meeting with Mr. Toktakunov, he twice communicated in writing that he had been tortured (see para. 62, above). Since then, he has provided consistent accounts of his torture over an extended period of time, making a written record or “diary” as soon as he could<sup>483</sup> and giving interviews about his treatment to civil society organizations such as the Committee to Protect Journalists and the International Commission of Jurists and news media such as

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<sup>482</sup> Basoglu M, Jaranson JM, Mollica R & Kastrop M., “Torture and mental health: a research overview,” in Gerrity E, Keane TM, Tuma F (eds), *The Mental Health Consequences of Torture*, (New York: Kluwer Academic/Plenum Publishers, 2001), at pp. 35-62.

<sup>483</sup> Exhibit 3: Diary of Mr. Askarov. Mr. Askarov wrote this diary while in hospital in Bishkek, shortly after his transfer from Nooken and Jalal-Abad in November 2010, see paras. 137 and 169, above.

Fergana.<sup>484</sup> He also described his torture in detail to the representatives of the Open Society Justice Initiative.

239. Mr. Askarov's account has been corroborated by the independent observations of witnesses. Mr. Toktakunov made a statement that Mr. Askarov had been beaten during his pre-trial detention and trial and repeatedly sought a medical examination as well as an investigation of his allegations. Ms. Gritsenko also considered that Mr. Askarov showed signs of ill-treatment. Mr. Askarov's account is further substantiated by contemporaneous evidence, including Mr. Toktakunov's photographs that were subsequently publicized.<sup>485</sup>
240. This testimonial and photographic evidence of torture and ill-treatment is further corroborated by the medical evidence. A doctor from Bazar-Korgon hospital acknowledged that Mr. Askarov "urgent[ly] needs to be hospitalized". Moreover, the medical evidence provided by Dr. Crosby, a consultant with Physicians for Human Rights, comprehensively corroborates the allegations of torture. Dr. Crosby concluded that Mr. Askarov had sustained serious physical injuries during his arrest and detention and was experiencing persistent medical symptoms due to these injuries.<sup>486</sup> For Dr. Crosby, Mr. Askarov's "description of acute symptoms, as well as chronic physical and psychological symptoms, his physical examination, and his psychological evaluation, are all highly consistent with his allegations of trauma" (see paras. 170 - 178, above). Mr. Askarov's credibility was supported by the observed consistency between Dr. Crosby's physical examination and his own description of physical mistreatment. Furthermore, there was no evidence that contradicted Mr. Askarov's report or the available evidence.<sup>487</sup>
241. The Kyrgyz Republic has failed to provide a satisfactory explanation for these custodial injuries. The fact that Mr. Askarov, under intimidation, attributed his injuries to beatings from cellmates and said he had no complaints against law enforcement officers does not remove the Kyrgyz government's obligation to provide a plausible explanation for torture while in police custody. He has explained that these statements were in response to specific threats from the police and prison authorities, and made in order to avoid further torture, threats to his life, or retaliation against other detainees. Since moved from the custody of the authorities who committed the torture, Mr. Askarov has provided a detailed and consistent account of his torture.
242. The torture of Mr. Askarov is furthermore consistent with a widespread pattern of abuse and torture of persons in police custody in the Kyrgyz Republic. This Committee has expressed concern about "instances of torture, inhuman treatment and abuse of power by law enforcement officials" in the Kyrgyz Republic.<sup>488</sup> The torture that Mr. Askarov suffered is particularly emblematic of the abuses against ethnic Uzbeks detained in the aftermath of the violence in South Kyrgyzstan in June 2010. Numerous international bodies, including the UN Special Rapporteur on Torture, the Organization for Security and Co-operation in Europe and Human Rights Watch, have condemned the reliance on torture and ill-treatment in custody, in the context of criminal investigations in the aftermath of

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<sup>484</sup> See e.g. ICJ Report; Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>; video interview with Askarov, 13 December 2010, available at <http://www.fergananews.com/article.php?id=6837>.

<sup>485</sup> Exhibit 73: Annex B to the Second affidavit of Dr. Sondra S. Crosby, 13 April 2012; see also articles cited at para. 66, above.

<sup>486</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 23 December 2011, at p. 9.

<sup>487</sup> Exhibit 72: Affidavit of Dr. Sondra S. Crosby, 23 December 2011, at p. 10.

<sup>488</sup> UNHRC, *Concluding observations on Kyrgyz Republic* (2000), UN Doc. CCPR/CO/69/KGZ, para. 7.

2010, by Krygyz law enforcement personnel (see paras. 189 - 190, 197 - 199, 203 - 204 and 212, above).

#### Detention Conditions and Failure to Treat Injuries

243. The conditions in which Mr. Askarov was detained and the failure of the authorities to provide any medical treatment, especially for the injuries inflicted by the beatings, aggravated the torture of Mr. Askarov and constitute a further instance of cruel and inhuman treatment in violation of Article 7.
244. The conditions in which Mr. Askarov was detained, in particular in the Bazar-Korgon police station, aggravated his torture and the suffering he endured as a result of the beatings. Mr. Askarov was kept in a small, dark, crowded cell with between seven and 12 other detainees, where he was denied proper access to toilet facilities (see paras. 83 - 85 above, paras. 306 - 310 below). These conditions aggravated his suffering from the torture inflicted upon him. In particular, the lack of lighting in the cell, combined with the refusal to allow his lawyer to provide him with eyeglasses and the repeated beatings and damage to his left eye, has led to deterioration in Mr. Askarov's eyesight (see paras. 43, 64, 101, 169 - 170 and 177 above). The lack of access to toilet facilities compounded the beatings to his kidneys, and resulted in Mr. Askarov passing thick blood instead of urine at times, or being unable to go to the toilet. On at least one occasion, the lack of access to toilet facilities caused Mr. Askarov to refuse to eat for 17 days (see paras. 85 and 128, above).
245. The failure to provide Mr. Askarov with medical treatment also exacerbated his torture. Throughout his time in police detention, he was provided with no medical treatment for the impact of the beatings and the conditions of detention, even when the examination by a doctor recommended that he be hospitalized immediately (see para. 85, above). When beatings left blood gushing from his head, he was told to clean it up himself (see para. 43, above); when he suffered substantial urinary and bowel problems, he was simply given a laxative (see para. 134, above); and on arrival at Tash-Kumyr police station, the basic medicine or painkiller that he had been taking was confiscated (see para. 127, above). The failure to provide adequate medical treatment has continued since his transfer to Bishkek. Despite an initial examination and stay in hospital, Mr. Askarov has not received any of the necessary tests or treatments for the impact of his torture or for other potentially life-threatening conditions identified in the independent medical review of Dr. Crosby (see paras. 175 and 178 - 181, above).
246. The repeated abuse of Mr. Askarov amounts to torture, in violation of Article 7. This is supported by detailed and consistent statements from Mr. Askarov and his lawyer, and independent medical reviews. Furthermore, the government has provided no explanation for the injuries sustained by him in custody. This torture was aggravated and exacerbated by the conditions in which Mr. Askarov was detained and the persistent refusal to provide medical treatment. The Kyrgyz Republic is therefore responsible for a violation of Article 7.

#### **B. Lack of Safeguards against Torture**

247. The Kyrgyz Republic failed to protect Mr. Askarov from torture because it did not implement adequate safeguards, in violation of Articles 2(2) and 7 of the ICCPR. A number of administrative and procedural failings facilitated Mr. Askarov's torture, in particular the failure to (1) transfer him to a secure detention facility, (2) allow medical examinations and (3) protect him from reprisals. The authorities also failed to promptly register Mr. Askarov's detention and provide him with access to a lawyer, which in addition to being

violations of Articles 9 and 14(3)(b) and (d) (see paras. 283 - 289 and 317 - 320, below) are also violations of the obligation to provide safeguards against torture. The UN Special Rapporteur on Torture identified the lack of many of these safeguards as part of a pattern which facilitated torture in the aftermath of the June 2010 violence.<sup>489</sup>

248. Article 2(2) of the ICCPR requires each State Party “to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This Committee has underlined the importance of adequate safeguards against torture, affirming that “to guarantee the effective protection of detained persons,” States need to ensure the realization of specific safeguards.<sup>490</sup> These safeguards include the right to have detention registered and notified to a third party; the right to access a lawyer; and the provision of an independent medical examination.<sup>491</sup>
249. Other human rights instruments reinforce the importance of safeguards in fulfilling a state’s obligations to prohibit and prevent torture, and make clear that a failure to implement such safeguards is a breach of that obligation.<sup>492</sup> This case highlights the link between the lack of safeguards and the initial and continued torture of Mr. Askarov.

#### 1. Failure to Transfer Mr. Askarov from Police Custody

250. The Kyrgyz Republic refused to transfer Mr. Askarov from police detention to a secure facility and instead held him in police custody, including for more than two months in the hands of colleagues of the police officer he was accused of killing. The risk of retaliation was exacerbated in Mr. Askarov’s case given his work exposing abuses by the local police. This violated the Kyrgyz Republic’s obligation to provide safeguards against torture.
251. This Committee has recognized that to safeguard against torture, detained persons should be held only “in places officially recognized as places of detention.”<sup>493</sup> Given that detainees are particularly vulnerable to torture in the early stages of their detention, it has recommended that states limit the length of police custody “to one or two days following arrest.”<sup>494</sup> The Special Rapporteur on torture has confirmed that persons should remain in police custody for no more than 48 hours, which he considered to be the international standard, after which the detainees “should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.”<sup>495</sup> The Special Rapporteur has emphasized the need for

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<sup>489</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 40.

<sup>490</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>491</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>492</sup> UN Committee against Torture, *General Comment 2: Implementation of article 2 by states parties*, 2007, paras. 8, 13; UN Standard Minimum Rules for the Treatment of Prisoners, 1955 (approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977); see also Commission on Human Rights Resolution 2003/33, *Torture and Other Cruel, Unusual or Degrading Treatment or Punishment*, UN Doc. E/CN.4/2003/L.11/Add.4 (2003).

<sup>493</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>494</sup> UNHRC, *Concluding Observations on Brazil* (2005), UN Doc. CCPR/C/BRA/CO/2, para. 16.

<sup>495</sup> UN Special Rapporteur on Torture, *Report Mission to Indonesia*, UN Doc. A/HRC/7/3/Add.7, 10 March 2008, para. 78.

transfer where “inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken.”<sup>496</sup>

252. In this case, Mr. Askarov was held in police custody for approximately five months, well exceeding the two days permitted by human rights standards. On 15 June 2010 he was first taken to Bazar-Korgon police station and remained detained there until the end of August 2010, a period of approximately two and a half months. This was the same police station where the police officer who he was accused of killing worked, and Mr. Askarov had for more than ten years exposed abuses by the police officers who worked there. Even after he was transferred from the Bazar-Korgon police station, Mr. Askarov continued to be held in police custody for a further two and a half months: in the police station in Nookan until 9 October 2010, and subsequently in police detention in Suzak and Tash-Kumyr until 12 November 2010.
253. In each of these phases of police detention, Mr. Askarov was tortured. He was beaten both in preparation for and during interrogations at Bazar-Korgon police station. Mr. Toktakunov requested that Mr. Askarov be moved to a safe detention facility, because he believed that holding Mr. Askarov in the deceased officer’s former station posed a risk to Mr. Askarov’s life and health and impacted on his testimony (see para. 81, above). This request was refused, and he continued to be held in the same police station throughout the investigation. When he was moved to other police stations for the trial and appeal hearings, Mr. Askarov was again beaten by police officers in retaliation for his participation and testimony during those hearings (see paras. 103 - 104, 125, 127 and 133 above).
254. The extended detention of Mr. Askarov in police custody, in particular in the police station in which the deceased officer had worked, thus facilitated his torture and violated the Kyrgyz Republic’s obligation to provide safeguards against torture.

## 2. Failure to Provide Independent Medical Examination

255. Mr. Askarov also was not provided with an independent medical examination during his detention, which facilitated his torture and impeded calls for an investigation of that torture.
256. This Committee has stated that “[t]he protection of the detainee ... requires that prompt and regular access be given to doctors.”<sup>497</sup> The UN Committee against Torture has also included the right to “independent medical assistance” amongst the guarantees to protect persons deprived of their liberty from torture.<sup>498</sup> States are obliged to guarantee the independence of doctors who are assigned to the protection, care and treatment of persons deprived of their liberty.<sup>499</sup>
257. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided wherever

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<sup>496</sup> UN Special Rapporteur on Torture, *Annual Report*, UN Doc. E/CN.4/2004/56, 2003, para. 40.

<sup>497</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>498</sup> UN Committee against Torture, *General Comment 2: Implementation of article 2 by states parties*, 2007, para. 13.

<sup>499</sup> UN Special Rapporteur on Torture, *Report on Visit to Mexico*, UN Doc. E/CN.4/1998/38/Add.2, para. 88(1).

necessary.”<sup>500</sup> The results of such examination must be accessible to the detainee.<sup>501</sup> In addition, the detainee should be entitled to a second medical examination or opinion,<sup>502</sup> and the UN Special Rapporteur on Torture has stated that “medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention.”<sup>503</sup>

258. In this case, Mr. Askarov was not provided with an independent medical examination. He was not examined promptly upon his first detention, but only two days later on 17 June 2010. This examination was not independent, as it was conducted in the presence of the prosecutor. Given that Mr. Askarov was understandably unwilling to discuss his torture with his lawyer in the presence of police guards (see paras. 62 and 75, above), he was also unwilling to discuss his torture in the presence of the prosecutor who was directing it. The prosecutor also directly intervened in the examination, telling the doctor how to characterize certain injuries that Mr. Askarov had suffered and how he had suffered them (see para. 56, above).
259. Despite requests from Mr. Askarov’s lawyer, the prosecutor refused to provide a copy of the results of this examination or to allow a second and independent medical examination of Mr. Askarov (see para. 65, above). Counsel also was not provided with a medical examination upon Mr. Askarov’s transfer from Bazar-Korgon to Nookan, and then subsequently to Suzak. In each case, Mr. Askarov and his fellow detainees were beaten shortly after their arrival at the new detention center. As noted by the Special Rapporteur on Torture, the failure to provide prompt, independent and follow-up examinations is common in Kyrgyzstan, and was a feature of the abuses following the June 2010 violence.<sup>504</sup>
260. By the time that he was offered a second medical examination, mid-way through the trial in Nookan, Mr. Askarov refused, as a result of the intimidation and beatings he received after speaking up on the first day of trial (see paras. 103 - 104 and 120, above; para. 264, below). Even Dr. Crosby’s medical evaluation was performed in the presence of a prison guard (see para. 171 and 176, above). The repeated failure to provide an independent medical examination thus facilitated his torture in each location where Mr. Askarov was detained, and impeded his efforts to secure accountability for that torture. It thus constitutes an additional violation of the Kyrgyz Republic’s obligation to provide safeguards against torture.

### 3. Failure to Protect from Reprisals and to Provide Complaints Mechanism

261. The Kyrgyz Republic did not provide any safe mechanism for Mr. Askarov to complain about the torture he suffered, and instead retaliated against him for lodging complaints.
262. To prevent torture and other ill-treatment, states must ensure that there is an effective mechanism for detainees to complain about their treatment, which requires that detainees be able to file such complaints without fears of reprisals or threats against them or their

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<sup>500</sup> Body of Principles for the Protection of All Persons under Any Form of Detention, 9 December 1988, UN Doc. A/RES/43/173, Principle 24.

<sup>501</sup> *Ibid.*, Principle 26.

<sup>502</sup> *Ibid.*, Principle 25; Istanbul Protocol, para. 123.

<sup>503</sup> UN Special Rapporteur on Torture, *Report on the Question of Torture*, UN Doc. E/CN.4/2003/68, 17 December 2002, Annex I (Recommendations), para. (f); see also UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 23.

<sup>504</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 23, 40 and 51.

family members. This Committee has recognized the importance of victims being able to file complaints, in particular regarding torture or ill-treatment in detention, without fear of reprisals: it has accepted communications and considered their merits even where the victim did not lodge a domestic complaint because of a fear of reprisals.<sup>505</sup> This is also consistent with the Committee's position that those who encourage or tolerate acts of torture must be held responsible.<sup>506</sup>

263. The requirement to protect complainants from reprisals is explicit in the Convention against Torture, which requires states to take steps "to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint".<sup>507</sup> The Committee again Torture has thus recommended that states should "create adequate conditions for them to report complaints without fear of reprisal."<sup>508</sup> In a recent case that Committee found a violation where the state "failed to ... take steps to ensure that [the complainant] and his family, as the main witnesses, were protected from intimidation as a consequence of their complaints and testimonies given during the investigation".<sup>509</sup> The Body of Principles reinforces that "a detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture" and that the complainant shall not suffer any prejudice for lodging such a complaint.<sup>510</sup>
264. In this case, Mr. Askarov suffered both intimidation to prevent him from making complaints and explicit retaliation when he did so. He was initially denied a private meeting with his lawyer, and was too intimidated to discuss his torture in the presence of the police guards (see paras. 62 and 75, above). After the first day of the trial, he and his fellow-detainees were hand-cuffed and beaten, and were told that this was to keep them quiet during the court hearings instead of putting their case and complaining about their mis-treatment. A few days after this beating, the judge authorized a medical examination, but instead of conducting an examination in court, the judge entrusted it to the prosecutor who arranged to conduct the examination in the police station where the detainees had suffered the torture. As a result, the detainees refused to participate in the examination (see paras. 103 - 104 and 120, above). Later, just before the appeal court hearings in October 2010, they were again beaten and Mr. Askarov was told directly that this was because he had written complaints against the police (see para. 125, above).
265. This pattern of intimidation and retaliation is consistent with the systemic fear of reprisals identified by the Special Rapporteur on Torture (see para. 207, above). Each of these acts of intimidation and retaliation facilitated further torture and impeded any investigation, and they further violate the obligation to provide safeguards against torture.

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<sup>505</sup> See e.g. *Avadanov v. Azerbaijan*, UNHRC, Views of 2 November 2010, UN Doc. CCPR/C/100/D/1633/2007, para. 6.4; *Pennant v. Jamaica*, UNHRC, Views of 3 December 1998, UN Doc. CCPR/C/64/D/647/1995, para. 8.3.

<sup>506</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 13.

<sup>507</sup> Convention against Torture, Article 13. See *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, UN Doc. CAT/C/48/D/433/2010, paras. 12.6 and 12.7.

<sup>508</sup> UNCAT, *Concluding Observation on Ghana* (2011), UN Doc. CAT/C/GHA/CO/1, para. 23(b). See also *Concluding Observations on Ethiopia* (2010), UN Doc. CAT/C/ETH/CO/1, para. 32.

<sup>509</sup> See *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, UN Doc. CAT/C/48/D/433/2010, paras. 12.6 and 12.7.

<sup>510</sup> Body of Principles for the Protection of All Persons under Any Form of Detention, 9 December 1988, UN Doc. A/RES/43/173, Principle 33(1) and (4).

#### 4. Additional Violations of Safeguards: Prompt Registration and Access to Counsel

266. In addition, other safeguards against torture were absent in this case, and facilitated the torture of Mr. Askarov. This Committee has identified the prompt and accurate registration of detention, including the time of detention, as an important protection for detainees.<sup>511</sup> The failure of the authorities to promptly register Mr. Askarov's detention in this case, in addition to demonstrating that such detention was unlawful (see paras. 283 - 289, below), also left Mr. Askarov vulnerable to torture. Both this Committee and the Committee against Torture have also emphasized the importance of prompt and regular access to a lawyer in preventing torture.<sup>512</sup> Here, Mr. Askarov was denied any access to an independent lawyer for the first seven days of his detention (15 to 21 June); and even once a lawyer joined his case, he was denied effective and regular access to his lawyer. This constitutes a further violation of the safeguards against torture, in addition to being a violation of Mr. Askarov's right to prepare his defence under Articles 14(3)(b) and (d) (see paras. 321 - 334 and 344 - 347, below). The Special Rapporteur on Torture highlighted the role that lack of prompt registration and provision of access to independent lawyers played in facilitating torture in the aftermath of the June 2010 violence.<sup>513</sup>

#### **C. Failure to Conduct an Effective Investigation**

267. The Kyrgyz Republic failed to conduct an effective investigation into the torture of Mr. Askarov, in further violation of Article 7 of the ICCPR, in conjunction with Article 2(3).
268. This Committee has stated that Article 2(3) obliges State parties to "ensure that individuals ... have accessible and effective remedies to vindicate [ICCPR] rights",<sup>514</sup> and has emphasised that "a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the [ICCPR]".<sup>515</sup> It has been particularly explicit in requiring the investigation of torture and cruel, inhuman or degrading treatment or punishment under Article 7, stating that complaints of torture "must be investigated promptly and impartially by competent authorities so as to make the remedy effective".<sup>516</sup> In an earlier case involving torture and death in police custody in the Kyrgyz Republic, this Committee held that an element of an effective remedy under Article 2(3) is an "impartial, effective and thorough investigation."<sup>517</sup>
269. The key criteria for the investigation of torture, as established by this Committee and reiterated by other human rights bodies, are set out in the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading*

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<sup>511</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>512</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11; UNCAT, *GK v. Switzerland*, Decision of 12 May 2003, UN Doc. CAT/C/30/D/219/2002, para. 6.3.

<sup>513</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 40.

<sup>514</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

<sup>515</sup> *Ibid.*, para. 15.

<sup>516</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 14.

<sup>517</sup> *Moidunov v. Kyrgyzstan*, UNHRC, Views of 19 July 2011, UN Doc. CCPR/C/102/D/1756/2008, para. 10.

*Treatment or Punishment* (“Istanbul Principles”)<sup>518</sup> and elaborated in detail in the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the “Istanbul Protocol”).<sup>519</sup> In order to be effective, an investigation must meet the following six criteria:

- *Independent and impartial.* Article 2(3) of the ICCPR imposes a “general obligation to investigate allegations of violations ... through independent and impartial bodies.”<sup>520</sup> The Istanbul Principles require that the investigators “shall be independent of the suspected perpetrators and the agency they serve”,<sup>521</sup> and this Committee has affirmed that complaints of torture against the police should not be investigated by or under the authority of the police.<sup>522</sup> In addition, an impartial investigation must be directed at uncovering the facts regarding what happened.<sup>523</sup>
- *Prompt and expeditious.* Complaints of ill-treatment “must be investigated promptly ... so as to make the remedy effective,”<sup>524</sup> and allegations of ill-treatment of detainees must be investigated “as expeditiously and thoroughly as possible”.<sup>525</sup>
- *Thorough investigation.* States have a duty to investigate cases of torture thoroughly,<sup>526</sup> which is one of the “fundamental principles of any viable investigation” of alleged torture.<sup>527</sup> Investigations must be thorough in seeking to ascertain the material facts,<sup>528</sup> and authorities “should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.”<sup>529</sup>
- *Family participation.* For an investigation to be deemed “effective”, it must include some degree of family involvement. At a minimum, family members of the victim must be informed of the outcome of investigations into alleged abuses by the state.<sup>530</sup> The Istanbul Principles provide that the victim’s family and legal representative should be

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<sup>518</sup> *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by General Assembly resolution 55/89 of 22 February 2001.

<sup>519</sup> United Nations Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2004, (available at <http://www.ohchr.org/Documents/Publications/training8rev1en.pdf>).

<sup>520</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

<sup>521</sup> Istanbul Principles, Article 2.

<sup>522</sup> UNHRC, *Concluding Observations on Hong Kong* (1996), UN Doc. CCPR/C/79/Add. 57, para. 11; *Concluding Observations on Kenya* (2005), UN Doc. CCPR/CO/83/KEN, para. 18; *Concluding Observations on Slovenia* (2005), UN Doc. CCPR/CO/84/SVN, para. 9; *Concluding Observations on Zambia* (1996), UN Doc. CCPR/C/79/Add. 62, para. 12.

<sup>523</sup> *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, para. 69.

<sup>524</sup> See UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 14. See also Istanbul Principles, para. 2.

<sup>525</sup> *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, UN Doc. CCPR/C/55/D/373/1989, para. 9.2.

<sup>526</sup> *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, para. 8.8; *Stephens v. Jamaica*, UNHRC, Views 18 October 1995, UN Doc. CCPR/C/55/D/373/1989, para. 9.2. See also *Ristic v. Yugoslavia*, UNCAT, Views of 11 May 2001, UN Doc. CAT/C/26/D/113/1998, para. 9.6.

<sup>527</sup> Istanbul Protocol, para. 74.

<sup>528</sup> *Ristic v. Yugoslavia*, UNCAT, Views of 11 May 2001, UN Doc. CAT/C/26/D/113/1998, para. 9.6.

<sup>529</sup> *Corsacov v. Moldova*, ECtHR Judgment of 4 April 2006, para. 69.

<sup>530</sup> *El Hassy v. Libyan Arab Jamahiriya*, UNHRC, Views of 24 October 2007, UN Doc. CCPR/C/91/D/1422/2005, para. 8.

“informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.”<sup>531</sup>

- *Public scrutiny.* For an investigation to be effective, its findings should be made public.<sup>532</sup> The Committee against Torture has recommended establishing centralised public registers of complaints of torture and of the results of investigations, to ensure openness and impartiality.<sup>533</sup>
- *Investigation capable of identifying and punishing those responsible.* This Committee has explained that a failure to bring perpetrators to justice could give rise to a separate breach of the ICCPR, an obligation that applies in particular to violations of Articles 6 and 7.<sup>534</sup> The Committee against Torture has similarly confirmed that investigations should seek to ascertain the facts and identify the perpetrators.<sup>535</sup>

270. In the present case, the Kyrgyz Republic failed to conduct any meaningful investigation of the torture of Mr. Askarov, despite repeated complaints of mistreatment being made to the police, the prosecutors and the courts (see paras. 154 - 164, above).
271. None of the Istanbul Protocol criteria for an effective investigation were complied with in Mr. Askarov’s case. The initial medical examination was undertaken in the presence of the prosecutor overseeing Mr. Askarov’s torture in detention, contravening the independence requirement. Mr. Askarov’s detention at the station where the deceased police officer worked undermined any prospect of an impartial investigation.
272. The Kyrgyz government’s conduct also fell short of the requirement for a prompt, expeditious and thorough investigation. Mr. Askarov and his lawyer raised complaints regarding torture and mistreatment before the District Court in Nookan, the appeal court in Tash-Kumyr and the Supreme Court of Kyrgyzstan (see paras. 118, 121, 130, 139 and 141, above). They also attempted to obtain an investigation into his torture from the prosecution authorities on numerous occasions (see paras. 154 - 164, above). Despite the extensive requests made by Mr. Askarov and his lawyer bringing the facts to the attention of various State institutions and requesting that they take action, no criminal investigation was ever ordered.
273. Mr. Askarov and his family were not only excluded from the investigation, but his family were themselves the subject of abuses during his investigation and trial. When Mr. Askarov’s younger brother came to search for him, he was detained without charges and was repeatedly beaten for two days. Mr. Askarov was not permitted to see his family throughout his detention in Bazar-Korgon station. When his sister-in-law attempted to visit Mr. Askarov, she was attacked with stones by relatives of the deceased officer. Mr. Askarov’s family was again attacked during his trial (see paras. 87 and 100, above). In

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<sup>531</sup> Istanbul Principles, Article 4; Minnesota Principles, Article 16.

<sup>532</sup> Istanbul Principles, at Article 5. See also Committee against Torture, Summary Record of the 245<sup>th</sup> Meeting, UN Doc. CAT/C/SR.245, 11 June 1996, para. 37; Nowak and McArthur, *The United Nations Convention against Torture: A Commentary* (Oxford: Oxford University Press, 2008) at 437.

<sup>533</sup> *Report of the Committee against Torture* (2001), UN Doc. A/56/44, para. 97(e).

<sup>534</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 18; see also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 15. See also *Traoré v. Côte d’Ivoire*, UNHRC, Views of 17 January 2011, UN Doc. CCPR/C/103/D/1759/2008, para. 7.9.

<sup>535</sup> *Encarnación Blanco Abad v. Spain*, UNCAT, Views of 14 May 1998, UN Doc. CAT/C/20/D/59/1996, para. 8.8; *Dzemajl v. Yugoslavia*, UNCAT, Views of 21 November 2002, UN Doc. CAT/C/29/D/161/2000, para. 9.4.

neither instance did the police take any action to protect his family or punish the perpetrators.

274. The Kyrgyz government also repeatedly ignored international calls for an independent investigation of the serious violations in this case. No Kyrgyz police officer or prosecutor has been investigated or held to account for the torture and ill-treatment of Mr. Askarov. The Kyrgyz authorities had a duty to undertake an effective investigation, notwithstanding Mr. Askarov's statement to prosecutor Turajanova that he received his injuries from cellmates and had no complaints against law enforcement officers (see paras. 75 and 80, above). This remark was made under intimidation and did not dispense with the Kyrgyz Republic's obligation to investigate allegations of torture. This Committee has held that investigation does not depend upon receipt of a complaint, but should be initiated as soon as there are grounds for believing that ill-treatment has occurred<sup>536</sup> and must be investigated "as expeditiously and thoroughly as possible".<sup>537</sup>
275. The failure by the Kyrgyz authorities to investigate Mr. Askarov's torture, and the superficial rejection of his complaints, are symptomatic of the pattern that the UN Special Rapporteur on Torture identified of prosecutors and judges ignoring the torture committed in the aftermath of the June 2010 violence.<sup>538</sup> Indeed, the Special Rapporteur specifically cited Mr. Askarov's case as an example of the Kyrgyz judiciary's "failure to act on allegations of torture and ill-treatment".<sup>539</sup> The Kyrgyz authorities' repeated refusal to investigate the allegations that Mr. Askarov was tortured, notwithstanding repeated complaints, thus amounts to a separate and independent violation of Article 7, in conjunction with Article 2(3), of the ICCPR.

#### **D. Failure to Provide Redress**

276. International law requires access to legal remedies for torture, including compensation and rehabilitation.<sup>540</sup> The Kyrgyz government has not provided Mr. Askarov with any remedies: no compensation or rehabilitation for his suffering, no restitution, no satisfaction, and no acknowledgment of the abuse, in violation of Articles 7 and 2(3) of the ICCPR.
277. Article 2(3) of the ICCPR has been interpreted by this Committee as placing an obligation on States to use their resources not only to investigate and punish violators, but also to compensate victims of human rights violations and ensure that they receive

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<sup>536</sup> *Alzery v. Sweden*, UNHRC, Views of 10 November 2006, UN Doc. CCPR/C/88/D/1416/2005, para. 11.7.

<sup>537</sup> *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, UN Doc. CCPR/C/55/D/373/1989, para. 9.2; *Spence v. Jamaica*, UNHRC, Views of 20 October 1994, UN Doc. CCPR/C/57/D/599/1994, para. 9; see also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, para. 14.

<sup>538</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 48.

<sup>539</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 49.

<sup>540</sup> *UN 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*, A/Res/60/147, adopted by the UN General Assembly on 21 March 2006. See also Committee against Torture, *Working Document on Article 14 for comments*, UNGA Res 62/148, 18 December 2007, para. 13.

rehabilitation.<sup>541</sup> This Committee has stated that “States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible”,<sup>542</sup> and it has recognized rehabilitation, including medical and psychological care, to be a key form of redress for survivors of torture.<sup>543</sup>

278. Article 14(1) of the UN Convention against Torture similarly provides that “[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” The Committee against Torture has explained that a state must establish a system to provide compensation where its agents are implicated in torture, regardless of whether those agents have been identified and thus held responsible.<sup>544</sup> Further, the Committee has frequently emphasised that rehabilitation, in addition to compensation, is required in order to provide adequate redress to victims of torture.<sup>545</sup> Depending on the circumstances, this might include treatment for trauma,<sup>546</sup> medical and psychological care, and legal and social services.<sup>547</sup>
279. Mr. Askarov has not been provided with medical treatment or rehabilitation for the impact that his torture had on his health, despite calls by doctors from the Bazar-Korgon hospital for his urgent hospitalization (see para. 85, above). Indeed, when he was taken to Tash-Kumyr police station, the head of the station confiscated his medicine, including medicine to alleviate pain from the repeated beatings inflicted on his kidneys (see para. 127, above). Although he has been permitted to take medication in prison since his transfer to Bishkek, this is largely self-medication, and the prison medical staff are not providing adequate treatment for his injuries and condition. Dr. Crosby identified a number of serious concerns for Mr. Askarov’s health in her assessments in December 2011 and February 2012, including potentially life threatening coronary artery disease, as well as a series of injuries associated with his torture (see paras. 172 - 178, above). Dr. Crosby identified a range of evaluations and tests which were required. None have been conducted and no change in treatment has been forthcoming.
280. Mr. Askarov also has not been provided with any compensation for the torture that he suffered. Instead, a civil judgment has been entered against him rather than against those responsible for his abuse. In the Kyrgyz Republic, victims of torture are unable to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture (see para. 227 above). Mr. Askarov and his lawyer have made strenuous efforts to have his

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<sup>541</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 16.

<sup>542</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 15.

<sup>543</sup> *Sahadath v. Trinidad and Tobago*, UNHRC, Views of 2 April 2002, UN Doc. A/57/40, para. 9. See also UNHRC, *Concluding Observations on Libya* (2007), UN Doc. CCPR/C/LBY/CO/4, para. 15.

<sup>544</sup> UNCAT, Summary Record of the 109th meeting, UN Doc. CAT/C/SR.109, paras. 22 and 27; UNCAT, *Report of the Committee against Torture* (1992), UN Doc. A/47/44, para. 337; *Guridi v. Spain*, UNCAT, Decision of 24 May 2005, UN Doc. CAT/C/34/D/212/2002, para. 6.8.

<sup>545</sup> See UNCAT, *Concluding Observations on Turkey* (2003), UN Doc. CAT/C/CR/30/5, para. 7(h); UNCAT, *Concluding observations on Ethiopia* (2010), UN Doc. CAT/C/ETH/CO/1; UNCAT, *Concluding observations on Jordan* (2010), UN Doc. CAT/C/JOR/2; UNCAT, *Concluding Observations on Latvia* (2007), UN Doc. CAT/C/LVA/CO/2.

<sup>546</sup> UNCAT, *Concluding Observations on Latvia* (2007), UN Doc. CAT/C/LVA/CO/2.

<sup>547</sup> *UN Basic Principles on Right to a Remedy*, para. 21.

torture investigated and brought before the courts, without any success (see paras. 154 - 164, above), and a proper civil claim is thus impossible.

281. There is no avenue for Mr. Askarov to obtain redress under Kyrgyz law for the torture and other violations that he suffered. The Kyrgyz Republic has failed to provide adequate compensation and rehabilitation for his torture and ill-treatment, in breach of Article 7, in conjunction with Article 2(3), of the ICCPR.

### **E. Unlawful and Arbitrary Detention**

282. Mr. Askarov's detention was unlawful in contravention of Article 9(1) of the ICCPR because it was not in accordance with Kyrgyz legal procedure. He was detained because he was a human rights defender who had exposed abuses by local police, and because he is an ethnic Uzbek, which made the detention both arbitrary in violation of Article 9(1) and a violation of the prohibition against discrimination and right to equal protection of law under Articles 2 and 26. In addition, he was detained to allow the police to torture him and coerce him to testify against leaders of the Uzbek community, and to prevent him from reporting on abuses by the authorities during and in the aftermath of the violence, which also rendered his detention arbitrary in violation of Article 9(1).

#### 1. The Detention was Unlawful as it Violated Kyrgyz Law

283. Mr. Askarov's detention violated Article 9(1) because it did not comply with Kyrgyz law, in that it was not promptly registered, his family was not informed of his detention, and he remained in police detention for five months and was not transferred to a proper pre-trial detention facility.
284. Article 9(1) of the ICCPR provides that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." This Committee has reiterated that deprivation of liberty "in violation of a procedure as established by law" violates Article 9(1).<sup>548</sup> Such violations may include arrest without a warrant<sup>549</sup> or unregistered and incommunicado detention.<sup>550</sup>
285. Prompt and accurate registration is an important component of lawful detention,<sup>551</sup> as well as an important safeguard against torture (see paras. 266 above). The UN Standard Minimum Rules for the Treatment of Prisoners require that all prisoners not only be registered, but that this registration accurately record the day and hour that a person was initially detained, as well as the reasons and authority for that detention.<sup>552</sup> The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that the reasons for the arrest, and the time of the arrest and the taking of the arrested person to a place of custody be duly recorded.<sup>553</sup> The UN Special Rapporteur on

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<sup>548</sup> *Gridin v. Russia*, UNHRC, Views of 20 July 2000, UN Doc. CCPR/C/69/D/770/1997, para. 8.1

<sup>549</sup> *Aboussedra v. Libyan Arab Jamahiriya*, UNHRC, Views of 25 October 2010, UN Doc. CCPR/C/100/D/1751/2008, para. 7.6

<sup>550</sup> *Marques de Morais v. Angola*, UNHRC, Views of 29 March 2005, UN Doc. CCPR/C/83/D/1128/2002, para. 6.3; UNHRC, *General Comment 8: Article 9 regarding the right to liberty and security of persons*, 1982, para. 2.

<sup>551</sup> *Çakici v. Turkey*, ECtHR, Judgment of 8 July 1999, para. 105.

<sup>552</sup> UN Standard Minimum Rules for the Treatment of Prisoners, 1955 (approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), Rule 7.

<sup>553</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (adopted by General Assembly resolution 43/173), Principle 12(1).

Torture has also recommended that states “[r]egister persons deprived of their liberty from the very moment of apprehension.”<sup>554</sup> This Committee has noted that one purpose of registration is that information regarding the detention of a person be “readily available and accessible to those concerned, including relatives and friends.”<sup>555</sup> This Committee has also held that detention is unlawful under Article 9(1) where a suspect is kept in police detention for longer than is authorized under national law.<sup>556</sup>

286. The Kyrgyz Criminal Procedure Code formally recognizes the importance of these principles. The details of the detention of a suspect must be registered within three hours (Article 95), and the suspect must be provided with a copy of the record of detention (Article 40(2)). In addition, the relatives of a suspect must be notified within 12 hours of the detention (Article 99). This initial period of detention may not extend for more than 48 hours, after which the suspect must be either released or have criminal proceedings instituted against him (Article 39). If the suspect is charged and is to be detained pending trial, then judicial authorization for that detention must be obtained within 48 hours from the moment of actual detention (Article 39(2)). Prior to this time the suspect may be held in police detention centers, under the authority of the Ministry of the Interior; however, once the suspect has been charged, they must be transferred to the custody of the Penitentiary Service and detained in remand prisons.<sup>557</sup>
287. Each of these provisions of the Kyrgyz Criminal Procedure Code was violated in Mr. Askarov’s case. Mr. Askarov was never shown a warrant authorizing his arrest. His detention was not registered within three hours, as required by law. Instead, he was held in unregistered detention for almost 24 hours from 11:00 am on 15 June 2010 until sometime on 16 June 2010,<sup>558</sup> during which time he was repeatedly interrogated and tortured (see paras. 36 - 45, above). His family was also not informed of his detention: his brother Hakimjan Askarov came to search for him, as a result of which he was detained by the police and brutally beaten (see paras. 39 - 41, above). The unlawful nature of Mr. Askarov’s detention was exemplified by prosecutor Turjanova’s statement to Mr. Toktakunov that the Criminal Procedure Code “does not work here” (see para. 61, above).
288. Mr. Askarov was also held in police detention far in excess of the 48 hours permitted by Kyrgyz law. While he was formally charged on the afternoon of 17 June 2010, Mr. Askarov continued to be held in police detention under the authority of the Ministry of the Interior for five months: first at the Bazar-Korgon police station, in the custody of the officers whose abuses he had regularly exposed and whose colleague he was charged with killing; and subsequently in the Nookan and Tash-Kumyr police stations. Mr. Toktakunov explicitly requested that Mr. Askarov be transferred from the Bazar-Korgon police station

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<sup>554</sup> UN Special Rapporteur on Torture, *Report on Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add.3, 16 December 2009, para. 81(a).

<sup>555</sup> UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

<sup>556</sup> *Umarova v. Uzbekistan*, UNHRC, Views of 3 November 2010, UN Doc. CCPR/C/100/D/1449/2006, para. 8.4.

<sup>557</sup> UN Special Rapporteur on the independence of judges and lawyers, *Report on Mission to Kyrgyzstan*, UN Doc. E/CN.4/2006/52/Add.3, 2005, para. 22.

<sup>558</sup> As noted above (para. 45), the precise time that his detention was registered is unclear: according to Exhibit 22: Record of Detention as Suspect, 16 June 2010, the registration took place between 9.00am and 9:30am; Mr. Askarov states that it took place later in the afternoon of June 16 (Statement of Azimjan Askarov, para. 29); and the International Commission of Jurists concluded that the registration took place in the evening (ICJ Report, para. 44).

as early as 25 June 2010, but this request was rejected (see paras. 81 - 82, above). The existence of a purported order of the Ministry of Interior that enables detainees to be kept in police detention due to the lack of temporary detention facilities cannot legitimize Mr. Askarov's protracted detention.

289. As noted above, the Special Rapporteur on Torture highlighted and criticized the practice of unregistered custody in Kyrgyzstan, where a person is invited for a "conversation" at the police station without the time or purpose of the visit being recorded and is beaten during this period; and the systemic failure to transfer detainees from police temporary detention to pretrial detention facilities<sup>559</sup> (see para. 206, above). Both Mr. Askarov's initial detention and his continued detention in police custody were unlawful in violation of Article 9(1). As noted above, Mr. Askarov is accordingly entitled to compensation for his unlawful detention under Article 9(5), in conjunction with Article 2(3).

## 2. The Detention was Arbitrary as it was not for a Proper Purpose

290. Mr. Askarov's detention was also arbitrary in violation of Article 9(1). It was not justified by the circumstances of the case, but was instead motivated by his ethnicity and his role as a human rights defender who had reported police abuse and was recording the recent abuses during and in the aftermath of the June 2010 violence, making it both arbitrary and denying Mr. Askarov equal protection of the law. It was also designed to facilitate his interrogation and torture, and the judge who ordered Mr. Askarov's detention did not substantiate any reasons why that detention was necessary.
291. Article 9(1) provides that "No one shall be subjected to arbitrary arrest or detention." Although the concept of arbitrariness is not defined in the ICCPR, this Committee has held that the protection against arbitrary detention applies broadly, and "include[s] elements of inappropriateness, injustice and lack of predictability."<sup>560</sup> Even detention which formally complies with domestic law can be arbitrary.<sup>561</sup> Arbitrariness must also be interpreted to include lack of due process of law,<sup>562</sup> and "incompatibility with the principles of justice or with the dignity of the human person."<sup>563</sup>
292. Detention "must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime", and detention will be arbitrary if the authorities do not demonstrate why those justifications apply to a particular case.<sup>564</sup> Detention for an ulterior purpose, such as to force the disclosure of information, will thus be arbitrary.<sup>565</sup> Even if a legal basis is given, if that is not the true basis for detention but is merely an excuse to justify an otherwise arbitrary rationale then the detention will still

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<sup>559</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 45 and 61.

<sup>560</sup> *Van Alphen v. The Netherlands*, UNHRC, Views of 23 July 1990, UN Doc. CCPR/C/39/D/305/1988, para. 5.8; *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, para. 9.8.

<sup>561</sup> *Van Alphen v. The Netherlands*, UNHRC, Views of 23 July 1990, UN Doc. CCPR/C/39/D/305/1988, para. 5.8; see also *Saadi v. United Kingdom*, ECtHR, Judgment of 29 January 2008, para. 67.

<sup>562</sup> *Marques de Morais v. Angola*, UNHRC, Views of 29 March 2005, UN Doc. CCPR/C/83/D/1128/2002, para. 6.1.

<sup>563</sup> *A v. Australia*, UNHRC, Views of 30 April 1997, UN Doc. CCPR/C/59/D/560/1993, para. 7.6 (referring to the *travaux préparatoires* to Article 9(1)).

<sup>564</sup> *Van Alphen v. The Netherlands*, UNHRC, Views of 23 July 1990, UN Doc. CCPR/C/39/D/305/1988, para. 5.8; *A. v. Australia*, UNHRC, Decision of 3 April 1997, UN Doc. CCPR/C/59/D/560/1993, para. 9.4.

<sup>565</sup> *Mbenge v. Zaire*, UNHRC, Views of 25 March 1983, Communication No. 16/1977, paras. 20-21.

constitute a violation.<sup>566</sup> The UN Working Group on Arbitrary Detention has regarded detention as arbitrary where it occurs merely because a detainee has exercised one of their fundamental rights.<sup>567</sup>

293. Detention will also be arbitrary if it is “motivated by discrimination”.<sup>568</sup> This Committee has explained that the principle of non-discrimination forbids any distinctions based on “religion, political or other opinion, national or social origin ... or other status”.<sup>569</sup> This principle is essential in protecting the rights of vulnerable populations such as persons in custody, minorities, and individuals espousing views that place them in danger of governmental or third party reprisals.<sup>570</sup> Where a person is arbitrarily detained based on discriminatory grounds, that person has been denied equal protection of the law, and the violation of their right to liberty constitutes a form of discrimination, under Articles 2 and 26.
294. Human rights defenders are recognized as being particularly susceptible to arbitrary detention. The UN Special Rapporteur on the Situation of Human Rights Defenders has noted that human rights defenders are frequently arrested and prosecuted on false charges, and are regularly denied access to a lawyer, medical care, and judicial process while in detention.<sup>571</sup> This Committee has repeatedly affirmed that detention aimed at silencing an advocate for greater democracy,<sup>572</sup> or detention as a result of someone’s personal political views,<sup>573</sup> is arbitrary and a violation of Article 9. The European Court of Human Rights has similarly condemned detention which was used partly for the purpose of silencing political opposition as a violation of Article 5 of the ECHR (right to liberty and security).<sup>574</sup>
295. In this case, Mr. Askarov’s detention was arbitrary because it was (a) based on his ethnic background, in violation of the prohibition against discrimination, (b) based also on his activities supporting human rights, (c) undertaken for the ulterior purpose of interrogation and torture, and (d) the judge did not provide any reasons showing why that detention was necessary.

#### *Detention was Discriminatory*

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<sup>566</sup> *Nikolaishvili v. Georgia*, ECtHR, Judgment of 13 January 2009, paras. 22, 57; *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, paras. 73-78; *Cebotari v. Moldova*, ECtHR, Judgment of 13 November 2007, paras. 48 and 53; *Bozano v. France*, ECtHR, Judgment of 18 December 1986, para. 60.

<sup>567</sup> *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, OHCHR, at Part II, available at [http://www.ohchr.org/Documents/Publications/FactSheet\\_26en.pdf](http://www.ohchr.org/Documents/Publications/FactSheet_26en.pdf).

<sup>568</sup> Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N.P. Engel, 2005), p. 225.

<sup>569</sup> UNHRC, *General Comment 18: Non-discrimination*, 1989, para. 7.

<sup>570</sup> See also UN Committee against Torture, *General Comment 2: Implementation of article 2 by states parties*, 2007, para. 21.

<sup>571</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. A/HRC/13/2230, December 2009, para. 31; Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/66/203, 28 July 2011, para. 18(b).

<sup>572</sup> *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, paras. 9.6, 9.8. See also *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, para. 77.

<sup>573</sup> *Bahamonde v. Equatorial Guinea*, UNHRC, Views of 10 November 1993, UN Doc. CCPR/C/49/D/468/1991, paras. 9.1, 9.5; *Jaona v. Madagascar*, UNHRC, Views of 1 April 1985, Comm. No. 132/1982, para. 14; *Blanco v. Nicaragua*, UNHRC, Views of 20 July 1994, UN Doc. CCPR/C/51/D/328/1988, para. 10.3. See also *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, para. 77.

<sup>574</sup> *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, para 77; see also paras. 62-78.

296. Mr. Askarov was detained firstly because of his ethnicity, as a member of a population who were targeted in the wave of nationalist repression after the violence of June 2010.
297. The discriminatory basis for his detention is evidenced by the repeated ethnic taunts and slurs that the police used against Mr. Askarov and his fellow detainees. On the first day of his detention he was mocked, told by the Kyrgyz police officers that “it is time for you to serve us”, and forced to sing the national anthem after he had been beaten so badly he could barely stand (see para. 37, above). At the hearing to authorize his detention, officers goaded him to insult the Uzbek president. At a later date, they undressed Mr. Askarov, called him a “sart” and kicked him repeatedly in the lungs (see paras. 53 and 137, above). His lawyer Mr. Toktakunov was also attacked at Bazar-Korgon police station when he came to visit Mr. Askarov because of his decision as an ethnic Kyrgyz to represent an Uzbek man (see para. 71, above), and Ms. Aziza Abdirasulova was told that she was not “a Kyrgyz” because she came as part of a delegation to check allegations of abuse of Mr. Askarov and his Uzbek co-defendants during their trial (see para. 108, above).
298. The discriminatory nature of Mr. Askarov’s ethnically-motivated detention is further reflected by the widespread Kyrgyz government retaliation against ethnic Uzbeks following the violence in June 2010. Although Uzbeks were twice as likely to be victims of violent crimes in the course of these events, they made up almost 80% of those criminally charged by the Kyrgyz authorities (see paras. 189 - 196, above). Such ethnic slurs and taunts were common in the persecution of Uzbeks in the aftermath of the June 2010 violence (see paras. 197 - 199, above). This atmosphere of discrimination against the Uzbek community, and the fact that Mr. Askarov was targeted because of his ethnicity, was further highlighted during his trial and appeal by the anti-Uzbek comments shouted by the crowd and the posters and signs covering the court building (see e.g. paras. 111 - 112 and 129, above).
299. Given that Mr. Askarov’s detention (as well as the other violations which followed from it) was motivated in large part by his Uzbek ethnicity, that detention was both arbitrary in violation of Article 9(1) and also violated the prohibition against discrimination embodied in Articles 2 and 26 of the ICCPR.

*Retaliation for Human Rights Work*

300. Secondly, Mr Askarov was detained because of his work as a human rights defender, including his earlier attempts to hold the police accountable for their actions and his efforts to gather information on abuses during the June 2010 violence (discussed in more detail at paras. 389 to 400, below).
301. Mr. Askarov’s arrest was carried out by Kyrgyz authorities while he was documenting the death toll and property destruction suffered mostly by the Uzbek community after the ethnic clashes of June 2010. Mr. Askarov states that the first person he saw killed in Bazar-Korgon during the violence was shot by the police. Shortly before he was arrested, a judge warned him to stop gathering information because what happened should remain a state secret, and throughout his interrogations the police officers demanded that he tell them where his video and camera were (see paras. 39 and 54, above).
302. On the day of his arrest, the head of the temporary detention facility said that “because of the articles criticizing us, we will get even with you”. The next day, prosecutor Turajanova told Mr. Askarov that although he had used the Criminal Procedure Code when he was lodging complaints against the police, another procedure would be used against him now (see para. 44, above). Prior to his appeal hearing, officers at the Suzak police station told Mr. Askarov that they were beating him because he had written against the police; the head of the temporary detention facility there told him not to read lectures on human rights (see

para. 125, above). In a recent interview with the Committee to Protect Journalists, Mr. Askarov stated that the “Bazar-Korgon police and prosecutors benefited from [his] imprisonment ... [because he] obstructed their corrupt work”.<sup>575</sup>

#### *Ulterior Purpose*

303. Thirdly, Mr. Askarov’s detention was not for a legitimate purpose in that it was undertaken to facilitate interrogation and torture, and to coerce him into testifying against a number of leaders of the local Uzbek community. As a respected human rights defender, Mr. Askarov’s testimony would be particularly valuable for the prosecution. The first police investigator talking to him also said that he wanted “to do things ‘the good way’” but “Mr. Askarov did not understand”,<sup>576</sup> before handing him over for torture (see para. 35, above). The deputy head of the Bazar-Korgon temporary detention facility told Mr. Askarov that he knew he was not guilty, but suggested cooperating by identifying ethnic Uzbeks who had allegedly distributed guns (see para. 40, above). Later, prosecutor Turajanova stated that he was detained so that the police could “get what we need” (see para. 48, above), namely to testify against prominent ethnic Uzbeks and to provide information about the alleged distribution of weapons.

#### *Lack of Reasons*

304. Although the courts that ordered Mr. Askarov’s detention recited a list of reasons in the abstract which purportedly showed that detention was necessary – to prevent escape, hindering the investigation and trial, and commission of other serious crimes – they provided no evidence or explanation demonstrating how these criteria applied to Mr. Askarov’s case. As his lawyers explained on appeal, Mr. Askarov was well known in Bazar-Korgon, a long-term resident there, a well-respected human rights defender with no previous convictions. Neither the Bazar-Korgon nor the Jalal-Abad appeal court addressed these arguments, or explained why detention was necessary in this particular case.<sup>577</sup> Instead, the initial decision on detention, which was upheld on appeal, appeared to be based primarily on the unequivocal, if unsubstantiated, statement by the Judge that Mr. Askarov was responsible for the death of a police officer (see para. 51, above).
305. The behavior of the police and prosecutor towards Mr. Askarov, an ethnic Uzbek and a prominent human rights activist, reveals that the true reasons for his detention were the targeting of individuals of Uzbek ethnic origin and retaliation for his actions in defence of human rights, especially reporting police abuse. Given that the authorities did not provide any reasons substantiating the need for his detention, and that he was detained primarily to allow the police to coerce him to provide false confessions or testimony against others and to punish him rather than for any legitimate purpose, his detention was arbitrary in violation of Article 9(1).

### **F. Inhumane Conditions of Detention**

306. The inhumane conditions that Mr. Askarov was subjected to while detained by Kyrgyz authorities violated his rights under Article 10 of the ICCPR.

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<sup>575</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

<sup>576</sup> Exhibit 79: ICJ Report, para. 38.

<sup>577</sup> Exhibit 25: Bazar-Korgon district court decision on detention, 17 June 2010; Exhibit 27: Decision of Jalal-Abad oblast court on detention appeal, 24 June 2010.

307. Article 10(1) guarantees that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The UN Standard Minimum Rules for the Treatment of Prisoners<sup>578</sup> establish guarantees for the respect of the human dignity of persons deprived of their liberty. These minimum guarantees include requirements for sufficient windows, light to read, ventilation, beds for each detainee with adequate bedding, sufficient food and water,<sup>579</sup> and sanitary facilities “adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner”<sup>580</sup>.
308. This Committee has endorsed the UN Standard Minimum Rules as “minimum standards regarding the conditions of detention”,<sup>581</sup> and has affirmed that the Rules articulate a non-exhaustive list of factors, contravention of which contributes to a violation of Article 10. These factors require that States provide the following to prisoners: adequate food, adequate medical care, basic sanitary facilities, and some recreation facilities.<sup>582</sup> In other cases, the Committee has also required proper bedding, clothing, and the ability to contact family or lawyers.<sup>583</sup> In applying these requirements, the Committee has held that similar, and often less severe, conditions of detention than those faced by Mr. Askarov violate Article 10.<sup>584</sup>
309. The conditions of Mr. Askarov’s detention in Bazar-Korgon police station, for nearly two and a half months, evince a total disregard for Mr. Askarov’s humanity and inherent dignity. In Bazar-Korgon, Mr. Askarov shared a 2.5 by 3 meter cell with between six and twelve other prisoners. The cell had only one small window with bars: there was little to no natural light, no artificial light was provided, and the cell was hot, humid and lacked ventilation. Mr. Askarov’s cell contained no separate beds; rather, he and his cellmates had to take turns sleeping on a wide bench, the only surface available other than the floor. Mr. Askarov and his cellmates were given only one loaf of bread and one plate of noodles each day to share, along with one bucket of water; and they were forced to urinate in a bucket in the corner of the cell and provided a total of only seven to ten minutes twice a day to use the bathroom (see paras. 83 - 85, above).
310. The conditions in Tash-Kumyr, where Mr. Askarov was detained for three weeks, also violate Article 10. Mr. Askarov was forced to sleep on an iron bed without a mattress or any sheets. As in Bazar-Korgon, when first transferred to Tash-Kumyr, Mr. Askarov was again not permitted to use the bathroom which, together with the consequences of the beatings, meant that he was unable to eat for 17 days. The lack of access to toilet facilities

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<sup>578</sup> UN Standard Minimum Rules for the Treatment of Prisoners, 1955 (approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). See also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (adopted by General Assembly resolution 43/173).

<sup>579</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rules 10, 11(a) and (b), 19 and 20.

<sup>580</sup> *Ibid.* Rule 12.

<sup>581</sup> *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, para. 9.3.

<sup>582</sup> *Kelly v. Jamaica*, UNHRC, Views of 8 April 1991, UN Doc. CCPR/C/41/D/253/1987, para. 5.7.

<sup>583</sup> See *Bandajevsky v. Belarus*, UNHRC, Views of 31 March 2006, UN Doc. CCPR/C/86/D/1100/2002, para. 10.6; *Ann Maria Garcia Lanza de Netto v. Uruguay*, Decision of 18 April 1979, UN Doc. CCPR/C/OP/1 at 45, paras. 14 and 16.

<sup>584</sup> See e.g. *Cabal and Pasini v. Australia*, UNHRC, Views of 8 August 2003, UN Doc. CCPR/C/78/D/1020/2001, para. 8.3 (prisoner given no items for personal hygiene and did not have access to a bed or toilet); *Bandajevsky v. Belarus*, UNHRC, Views of 31 March 2006, UN Doc. CCPR/C/86/D/1100/2002, para. 10.6 (prisoner given no items for personal hygiene and did not have access to a bed or toilet).

has caused significant impact on Mr. Askarov's health: at one point he was urinating thick blood; at another time, he developed a large blockage in his bowel (see paras. 85 and 128, above). Once again, these conditions and violations are consistent with those found by the Special Rapporteur on Torture during his recent mission to Kyrgyzstan, including inadequate or non-existent daylight and ventilation, insufficient space, a single serving of poor-quality food each day, and one or two scheduled times each day for inmates to use the toilet<sup>585</sup> (see para. 207, above).

### **G. Violation of Pretrial Rights**

311. The Kyrgyz Republic violated Mr. Askarov's pretrial rights under Article 14 of the ICCPR. He was denied adequate time and facilities for the preparation of a defence, and the right to communicate with counsel, in violation of Articles 14(3)(b) and (d); and public officials made statements portraying him as guilty, violating the presumption of innocence under Article 14(2).

#### Violation of the Right to Adequate Time and Facilities for the Preparation of a Defence and to Communicate with Counsel

312. From the time of his arrest until his trial, Mr. Askarov was held in detention by the police. This period of pretrial detention was characterised by numerous violations of his right to prepare a defence and communicate with counsel, an essential component of a fair trial.
313. Articles 14(3)(b) and (d) of the ICCPR contain a set of minimum guarantees to ensure that people accused of crimes can obtain a fair trial: "In the determination of any criminal charge against him, everyone shall be entitled: ... (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; and ... (d) ... to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right".
314. These guarantees apply not only to the trial itself, but also to pretrial proceedings, because an initial failure to guarantee due process in pretrial proceedings can jeopardize the fairness of the subsequent trial.<sup>586</sup>
315. In order to ensure that the right to a fair trial is respected in the pretrial phase, there are a number of components that must each be fulfilled. As explained below, the right to legal assistance requires that:
- (a) a person must be informed of their right to counsel upon arrest;
  - (b) a person must have prompt access to practical and effective legal representation, and should not be interrogated or compelled to participate in investigatory acts in the absence of a lawyer.

Once legal assistance has been provided to a person, the right to prepare a defence also requires that:

- (c) a person have the right to adequate time and confidential communications with a lawyer;

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<sup>585</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 60.

<sup>586</sup> See *Imbrioscia v. Switzerland*, ECtHR, Judgment of 24 November 1993, para. 36; *John Murray v. United Kingdom*, ECtHR, Judgment of 8 February 1996, para. 62; *Berlinski v. Poland*, ECtHR, Judgment of 20 June 2002, para. 75.

(d) a person have adequate facilities to prepare their defence, including effective access to evidence; and

(e) the lawyer must be able to represent their client without restrictions, influence, pressure or undue interference.

316. Each of these components of the right to a fair trial was breached by the treatment of Mr. Askarov during the pretrial stage of the proceedings against him. Mr. Askarov was not informed of his right to counsel upon his arrest and he was denied practical and effective legal assistance for the first eight days of his detention. During this time, he was interrogated repeatedly and required to participate in other investigative acts in the absence of a lawyer. Even after he was able to access a lawyer of his choice, Mr. Toktakunov, he was neither allowed to communicate confidentially with him, nor permitted sufficient time or facilities to prepare his defence and did not have adequate and timely access to the documents in the casefile. Furthermore, Mr. Toktakunov was threatened and attacked because of his role in defending Mr. Askarov. Each of these breaches constitute violations of Articles 14(3)(b) or (d), as specified below. The cumulative effect of these violations was that Mr. Askarov was denied his fundamental right to a fair trial.

*(a) Right to Be Informed of the Right to Counsel*

317. Mr. Askarov was not informed of his right to counsel, either at the time of his arrest or at the time his detention was officially registered. This was a breach of his right to communicate with counsel under Article 14(3)(b), and of his specific right to be informed of his right to legal assistance under Article 14(3)(d). This Committee has found a breach of Article 14(3)(d) in a case where a suspect was not informed of his right to be represented by a lawyer upon his arrest.<sup>587</sup> This approach is reinforced by the jurisprudence of the European Court of Human Rights, which holds that state authorities have a positive obligation to inform suspects of their right to a lawyer and to legal aid and must take all reasonable steps to ensure that the suspect is fully aware of his rights of defence.<sup>588</sup>

318. Mr. Askarov was not informed of his right to a lawyer upon his arrest and detention by the police on 15 June 2010, in breach of Articles 14(3)(b) and (d). Instead, for the first day of his detention, he was formally designated as a “witness” and warned of criminal liability for making false testimonies (see para. 38, above).

319. There will be still be a breach of Articles 14(3)(b) and (d) in situations where the person is accidentally or deliberately described as a witness rather than a suspect. The European Court of Human Rights has found fair trial violations in cases where, even though the suspect had been formally designated as a witness under the domestic criminal procedure laws, he should have been regarded *de facto* as a person suspected of a criminal offence.<sup>589</sup> Mr. Askarov, from the moment of his arrest, was obviously a suspect, despite being deliberately designated as a witness. Mr. Askarov was entitled to all of the legal safeguards in Article 14 from this time, including being informed of his right to a lawyer and being able to access practical and effective legal representation.

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<sup>587</sup> *Barno Saidova v. Tajikistan*, UNHRC, Views of 20 August 2004, UN Doc. CCPR/C/81/D/964/2001, para. 6.8. See also *Rolando v. Philippines*, UNHRC, Views of 8 December 2004, UN Doc. CCPR/C/82/D/1110/2002, para. 5.6.

<sup>588</sup> *Panovits v. Cyprus*, ECtHR, Judgment of 11 December 2008, paras 67-68. See also: *Padalov v. Bulgaria*, ECtHR, Judgment of 10 August 2006, paras. 55-56; *Plonka v. Poland*, ECtHR, Judgment of 31 March 2009, paras. 37-38; *Pishchalnikov v. Russia*, ECtHR, Judgment of 24 September 2009, paras 79-80.

<sup>589</sup> *Shabelnik v. Ukraine*, ECtHR, Judgment of 17 February 2009, para.57; *Brusco v. France*, ECtHR, Judgment of 14 October 2010, paras. 52-54.

320. Furthermore, even once Mr Askarov's detention was registered on 16 June 2010 and he was officially designated as a suspect, he was still not informed of his rights as a suspect nor was he provided with a lawyer, a further breach of Articles 14(3)(b) and (d).

*(b) Right to Prompt Access to Practical and Effective Legal Representation*

321. Despite his requests for a lawyer, Mr. Askarov was denied access to effective legal representation during the first seven days of his detention, from 15 to 21 June. During this time, he was interrogated repeatedly and required to participate in a confrontation with police officers and a search of his house. When Mr. Askarov was provided with a state-provided lawyer during his preliminary hearing on pretrial detention, the lawyer failed to provide even the most basic legal assistance. Even once an effective lawyer joined his defence on 22 June, Mr Askarov was denied sufficient and confidential access to him, as discussed below (see paras. 329 - 334).

322. *Failure to Allow Access to a Lawyer.* The failure to provide prompt access to a lawyer is both an important safeguard against torture (see para. 266, above), and also a fundamental fair trial guarantee. This Committee has emphasised that Article 14(3)(b) is "an important element of the guarantee of a fair trial and an application of the principle of the equality of arms ... The right to communicate with counsel requires that the accused is granted prompt access to counsel".<sup>590</sup> In a line of consistent jurisprudence, it has held that people accused of criminal offences must be effectively assisted by a lawyer at all stages of criminal proceedings,<sup>591</sup> including the initial period of detention.<sup>592</sup> The Committee has long held that denial of a lawyer during the initial days of detention and interrogation in the absence of a lawyer violates both Articles 14(3)(b) and (d).<sup>593</sup> For example, it found a breach where the accused was denied access to the legal counsel of his choice for one day and that interrogations and other investigative acts were conducted during that time, despite the fact that the accused had been assigned with a state-appointed lawyer who was present during all interrogations and investigative acts.<sup>594</sup> The Committee against Torture has also criticised countries that do not provide legal safeguards and guarantees to practically facilitate the right to a lawyer,<sup>595</sup> and has stated that the fundamental legal safeguards during detention include "in particular, *from the actual moment of deprivation of liberty*, the right to access a lawyer".<sup>596</sup> The UN Subcommittee on Prevention of Torture has

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<sup>590</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, paras. 32, 34.

<sup>591</sup> *Barno Saidova v. Tajikistan*, UNHRC, Views of 20 August 2004, UN Doc. CCPR/C/81/D/964/2001, para. 6.8; *Borisenco v. Hungary*, UNHRC, Views of 14 October 2002, UN Doc. CCPR/C/76/D/852/1999, para. 7.5.

<sup>592</sup> *Rolando v. Philippines*, UNHRC, Views of 8 December 2004, UN Doc. CCPR/C/82/D/1110/2002, para 5.6.

<sup>593</sup> *Gridin v. Russia*, UNHRC, Views of 18 July 2000, UN Doc. CCPR/C/69/D/770/1997, para 8.5; *Marlem Carranza Alegre v. Peru*, UNHRC, Decision of 17 November 2005, UN Doc. CCPR/C/85/D/1126/2002, para 7.5.

<sup>594</sup> *Lyashkevich v. Uzbekistan*, UNHRC, Views of 11 May 2010, UN Doc. CCPR/C/98/D/1552/2007, para. 9.4. See also *Kasimov v. Uzbekistan*, UNHRC, Views of 30 July 2009, UN Doc. CCPR/C/96/D/1378/2005, para 9.6.

<sup>595</sup> Report of the Committee against Torture, UN Doc. CAT A/57/44 (2002), para. 44(e); UNCAT, *Concluding observations on China* (2008), UN Doc. CAT/C/CHN/CO/4, para. 11.

<sup>596</sup> UNCAT, *Concluding observations on Kazakhstan* (2008), UN Doc. CAT/C/KAZ/CO/2, para. 9 (emphasis added).

likewise emphasized the importance of early access to legal counsel in preventing torture.<sup>597</sup>

323. These principles have been affirmed by the European Court of Human Rights. In *Salduz v Turkey*, the Grand Chamber of that Court held that the fact that the applicant was interviewed by the police without a lawyer had irretrievably affected his defence rights.<sup>598</sup> The Court held that this breach could not be cured by provision of a lawyer at a later stage of the proceedings, nor by the fact that the applicant had been able to contest the charges against him at his trial. The “*Salduz* principle” has been confirmed in a large number of subsequent cases, with the European Court holding that the right to legal assistance arises immediately upon deprivation of liberty,<sup>599</sup> and a failure to allow access to counsel constitutes a violation of fundamental defence rights under Article 6 of the European Convention of Human Rights.<sup>600</sup> The Court has also held that an accused still has the right to counsel immediately upon arrest even if he exercises his right to silence during questioning and interrogations.<sup>601</sup>
324. Mr. Askarov was denied prompt access to a lawyer in this case. During the first three days of his detention, Mr. Askarov was interrogated on four occasions and obliged to participate in other investigative acts without a lawyer being present. On 15 June 2010, the day of his arrest, Mr. Askarov was interrogated without a lawyer on two occasions, by police officers and by prosecutor Turajanova. On 16 and 17 June 2010, he was interrogated at length by numerous police officers. Mr. Askarov asked for access to a lawyer, but was refused. This lack of access to counsel left Mr. Askarov even more vulnerable to ill-treatment. During these interrogations, he was beaten repeatedly, kicked and punched in the kidneys, beaten with a pistol, and threatened with suffocation. The repeated refusal of the police officers and prosecutors to provide Mr. Askarov with access to a lawyer, even as he was being interrogated, beaten and threatened, violated his basic fair trial rights.
325. In addition to the interrogations, Mr. Askarov was also required to participate in other investigative acts in the absence of a lawyer. On 16 June 2010, Mr. Askarov was required to participate in a confrontation with the police officers who accused him of being present and participating in the violent events in Bazar-Korgon village, but was not provided with a lawyer or legal assistance. On 17 June 2010, police officers took Mr. Askarov to his house and demanded the surrender of documentary evidence and video equipment. Again, no lawyer was present during this search process. The failure to allow access to a lawyer to effectively advise, represent and defend Mr. Askarov’s interests during the first eight days of his detention, and the fact that he was forced to endure violent and lengthy interrogations and other investigative acts in the absence of a lawyer, constitute breaches of Articles 14(3)(b) and (d) of the ICCPR.

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<sup>597</sup> Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, UN Doc. CAT/OP/MDV/1, 26 February 2009, para. 62 (“access to a lawyer is an important safeguard against ill-treatment”).

<sup>598</sup> *Salduz v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 27 November 2008, para. 55.

<sup>599</sup> *Dayanan v. Turkey*, ECtHR, Judgment of 13 October 2009, para. 30; *Brusco v. France*, ECtHR, Judgment of 14 October 2010, at para. 45; *John Murray v. the United Kingdom*, ECtHR, Judgment of 8 February 1996, paras 59-60; *Magee v. the United Kingdom*, ECtHR, Judgment of 6 June 2000, paras. 39-44.

<sup>600</sup> *Salduz v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 27 November 2008, para. 55; *Mader v. Croatia*, ECtHR, Judgment of 21 June 2011, para 168; *Dayanan v. Turkey*, ECtHR, Judgment of 13 October 2009, paras. 31, 32.

<sup>601</sup> *Dayanan v. Turkey*, ECtHR, Judgment of 13 October 2009, para. 34.

326. *Ineffectiveness of State-Appointed Counsel.* The right to effective legal counsel was also violated during Mr. Askarov's first court appearance on 17 June 2010. Although Mr. Askarov was given a state-appointed lawyer for this hearing, this lawyer failed to provide even the most rudimentary of legal assistance.
327. Human rights law requires that legal representation is effective, and that the State concerned may be responsible for a breach of Article 14 where it is not. This Committee noted that it is incumbent on the State to ensure that legal representation is effective and that the conduct of a case is not incompatible with the interests of justice.<sup>602</sup> A State may be held responsible for the conduct of a defence lawyer if it was, or should have been, manifest to the judge that the lawyer's behavior was incompatible with the interests of justice.<sup>603</sup>
328. On the evening of 17 June 2010, Mr. Askarov was taken before a judge at the Bazar-Korgon district court to determine whether he would be kept in detention pending trial. At the court, Mr. Askarov was provided with a state-appointed defence lawyer, Syrga, who failed to provide effective legal assistance and whose behavior was incompatible with the interests of justice: he did not take any instructions from Mr. Askarov, did not explain his rights, did not prepare him in any way for the hearing, and did not say or do anything during the hearing to protect his interests. This was or should have been manifest to the police and to the court. Syrga also did not take any steps to check on the conditions of Mr. Askarov's detention, despite the fact that he had bruises and other visible signs of ill-treatment. To the contrary, Syrga accused Mr. Askarov of being disrespectful and writing critical articles about the police (see paras. 49 - 50, above). The UN Special Rapporteur on Torture identified that in the aftermath of the June 2010 violence, torture was often facilitated by "the complicity of State-appointed lawyers ... who offer a purely token presence".<sup>604</sup> This failure to provide effective legal representation during a preliminary hearing constitutes a breach of Article 14(3)(d) of the ICCPR.

*(c) Right to Adequate Time and Confidential Communications with Lawyer*

329. After Mr. Askarov had spent eight days in police detention, he was able to meet with a lawyer of his choice, Mr. Toktakunov. However, his access to counsel was severely constrained: police officers refused to allow some meetings, initially did not allow Mr. Askarov to meet privately and communicate confidentially with Mr. Toktakunov, and only permitted meetings to last for brief periods which were not adequate to prepare a defence.
330. Lawyers must be able to communicate with detainees confidentially, and to meet with them for an adequate time to prepare their defence.<sup>605</sup> With respect to confidentiality, the Committee has held that an accused person must be permitted to meet their lawyer in private.<sup>606</sup> Article 14(3)(b) is violated where a suspect and his lawyer are only permitted to

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<sup>602</sup> *Borisenco v. Hungary*, UNHRC, Views of 14 October 2002, UN Doc. CCPR/C/76/D/852/1999, para. 7.5; *Junior Leslie v. Jamaica*, UNHRC, Views of 7 August 1998, UN Doc. CCPR/C/63/D/564/1993, para. 9.4.

<sup>603</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 32.

<sup>604</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 40.

<sup>605</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, paras. 32 and 34.

<sup>606</sup> *Gridin v. Russia*, UNHRC, Views of 18 July 2000, UN Doc. CCPR/C/69/D/770/1997, para 8.5

meet in the presence of an investigator during the preliminary investigations.<sup>607</sup> As the European Court of Human Rights explained, “[i]f a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness”.<sup>608</sup>

331. With respect to the issue of adequate time, this Committee has observed that what constitutes “adequate time” requires an assessment of the individual circumstances of each case.<sup>609</sup> The Committee has found a breach of Article 14(3)(b) where an accused was only permitted half an hour for consultation with counsel prior to trial.<sup>610</sup> Similar decisions were made where an accused was only granted a short time each day during his trial to communicate with his counsel,<sup>611</sup> and where an accused only met with his counsel ten minutes before the start of the trial.<sup>612</sup> The principles of confidentiality and adequate time have also been verified by various UN organs.<sup>613</sup>
332. In this case, Mr. Askarov was neither permitted to communicate confidentially with his lawyer, nor provided with adequate time to consult with his lawyer in order to prepare his defence. On 22 June 2010, after eight days of police detention, Mr. Askarov was able to see Mr. Toktakunov for the first time, but prosecutor Turajanova denied his request to meet privately and stated that the Criminal Procedure Code “does not work here” (see para. 61, above). As a result, Mr. Askarov and Mr. Toktakunov were forced to conduct their first consultation in the presence of police officers. Mr. Askarov was intimidated by the police presence, and whispered to Mr. Toktakunov, passing him a note stating that he had been beaten (see para. 62, above). This refusal to allow confidential and private conversations impeded on Mr. Askarov’s right to practical and effective legal representation and was a breach of Article 14(3)(b).
333. Mr. Toktakunov made two separate complaints to the Jalal-Abad prosecutors office about the need for private and confidential meetings. In response to his complaints, Mr. Toktakunov was permitted to meet privately with Mr. Askarov on 23 June 2010 and on 2 August 2010. These meetings only lasted five minutes and ten minutes respectively. Mr. Toktakunov has estimated that during the entire investigation process, he was only able to speak with Mr. Askarov alone for a total of two hours.
334. The short period of time that Mr. Askarov was permitted to meet with Mr. Toktakunov was also not adequate, a further breach of Article 14(3)(b). Mr. Askarov was facing numerous charges, including complicity to murder, incitement of ethnic hatred, and organisation of mass disorders. The severity of the possible penalties for those charges was as high as life imprisonment and the relatives of the deceased police officer asked the court to apply the

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<sup>607</sup> *Nazira Sirageva v. Uzbekistan*, UNHRC, Views of 18 November 2005, UN Doc. CCPR/C/85/D/907/2000, para. 6.3.

<sup>608</sup> *Brennan v. the United Kingdom*, ECtHR, Judgment of 16 October 2001, para. 58.

<sup>609</sup> *Little v. Jamaica*, UNHRC, Views of 1 November 1991, UN Doc. CCPR/C/43/D/283/1988, para. 8.4; See also *Glenford Campbell v. Jamaica*, UNHRC, Views of 7 April 1992, UN Doc. CCPR/C/44/D/248/1987, para 6.5.

<sup>610</sup> *Little v. Jamaica*, UNHRC, Views of 1 November 1991, UN Doc. CCPR/C/43/D/283/1988, para. 8.4

<sup>611</sup> *Rayos v. Philippines*, UNHRC, Views of 7 August 2004, UN Doc. CCPR/C/81/D/1167/2003, para 7.3

<sup>612</sup> *Reid v. Jamaica*, UNHRC, Views of 14 July 1994, UN Doc. CCPR/C/51/D/355/1989, para 14.2

<sup>613</sup> See UN Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principles 8 and 22. See also UN Standard Minimum Rules for the Treatment of Prisoners, Rule 93. Pursuant to rule 95, these rules apply not only to prisoners but also to those on remand and other untried detainees.

death penalty. The case against him was legally and factually complex, set within the context of a period of ethnic clashes involving a range of State and individual actors. Taking into account the number, type and severity of the charges, and the complexity of the case, the fact that Mr. Askarov was only permitted a total of two hours to consult with his lawyer before the trial was insufficient to allow for adequate preparation of his defence, in violation of Article 14(3)(b).

*(d) Right to Adequate Facilities*

335. Mr. Askarov was also denied the right to adequate facilities to prepare his defence. Mr. Askarov and Mr. Toktakunov were repeatedly denied effective access to evidence and documents in the case file in breach of Article 14(3)(b).
336. This Committee has clarified that “adequate facilities” in Article 14(3)(b) “must include access to documents and to other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory”.<sup>614</sup>
337. Mr. Askarov and Mr. Toktakunov were repeatedly denied effective access to the case file. On 23 June 2010, Mr. Toktakunov asked prosecutor Turajanova for copies of significant documents from the case file, including records of confrontation, records of search, and records of the seizure of Mr. Askarov’s car. These documents are basic and important standard evidence, forming the basis of the case that the prosecution offers in court, and thus fall within the category of material evidence that the prosecution must disclose to the defence. Prosecutor Turajanova refused this request with no explanation.
338. Prosecutor Turajanova also refused Mr. Toktakunov effective access to Mr. Askarov’s medical examinations. Medical records should be disclosed to the defence on the grounds that they may reveal that an accused has sustained injuries during his time in police detention and indicate that any confessions were not voluntary. Prosecutor Turojanova refused this request again, with no justification or explanation. Mr. Toktakunov protested these refusals in two separate written complaints to the Jalal-Abad prosecutor’s office, dated 23 June and 25 June 2010. This denial violated Article 14(3)(b).
339. Even once he was finally allowed to view the case file, Mr. Toktakunov was not permitted to take photographs or otherwise make copies of the documents. In the circumstances of this case, this denial also violated the right to adequate facilities. Using the guidelines set down by this Committee in *OF v Norway*,<sup>615</sup> it was not appropriate or fair for Mr. Toktakunov to only be allowed to inspect crucial documentation at the prosecutor’s office without being allowed to make copies. The case against Mr. Askarov was complex, the documents were voluminous and the charges he faced were severe. There were many practical difficulties thwarting Mr. Toktakunov’s ability to attend the police station, as he lived in Bishkek and had to travel ten hours by car to get to the Bazar-Korgon station. Furthermore, it was not practicable for Mr. Toktakunov to review the file at the police station as he had been threatened, attacked or asked to leave on the basis of his involvement in Mr. Askarov’s case on a number of occasions. The denial of an opportunity to make copies, or to make any other provision for effective access, denied any meaningful access to the case file and breached Mr. Askarov’s right to defend himself and get a fair trial under Article 14(3)(b).

*(e) Threats and Attacks on Counsel*

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<sup>614</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 33.

<sup>615</sup> *OF v. Norway*, UNHRC, Views of 26 October 1984, Communication No. 158/1983.

340. Mr. Askarov’s right to effective legal assistance in the preparation of his defence under Article 14(3)(b) was also breached by the fact that Mr. Toktakunov was subjected to harassment, threats and physical attacks due to his role defending Mr. Askarov.
341. This Committee stressed that defence lawyers must be able to undertake their duties without undue interference:
- “Lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter”.<sup>616</sup>
342. The UN Basic Principles on the Role of Lawyers also place a duty on the domestic government to ensure that lawyers are not intimidated or harassed in the performance of their functions, and require the authorities to safeguard the security of lawyers:
- “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.
- “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.<sup>617</sup>
343. With respect to harassment and attacks on lawyers, the UN Committee against Torture has stressed that States should “investigate all attacks against lawyers and petitioners, with a view to prosecution as appropriate” and that there should be “immediate action to investigate acts of intimidation and other ways of impeding the independent work of lawyers”.<sup>618</sup>
344. Mr. Toktakunov was harassed, intimidated and physically attacked on two occasions as a result of his role as defence counsel for Mr. Askarov. On 23 June 2010, at the Bazar-Korgon police station, he was threatened with violence by a group of people who identified themselves as relatives of the deceased police officer. The group physically attacked a woman who was accompanying Mr. Toktakunov to the police station. Several prosecutors observed the incident and took no action to intervene, safeguard Mr. Toktakunov, or investigate and prosecute the attack (see paras. 71 - 72, above).
345. The second incident occurred on 2 August 2010, as Mr. Toktakunov was leaving the Bazar-Korgon police station. He was attacked by a group of 10-15 people who took his briefcase, swore at him, tore his shirt, and threatened to punish him unless he stopped acting for Mr. Askarov (see paras. 89 - 90, above). The circumstances suggested that the police officers of Bazar-Korgon had facilitated and encouraged the attack: the attackers were able to obtain access to the backyard of the police station; the police officers all left the backyard when the attackers came in; and those police officers who were present in the station did not intervene. Lawyers for Mr. Askarov’s co-defendants were also intimidated, and the police

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<sup>616</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para.s 32, 34.

<sup>617</sup> *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principles 16 and 17.

<sup>618</sup> UNCAT, *Concluding observations on China* (2008), UN Doc. CAT/C/CHN/CO/4, para. 15.

suggested that they leave town, indicating that the investigators themselves were under pressure from the deceased officer's family (see para. 74, above). Mr. Toktakunov reported the incidents to the Minister of Interior, who replied that he had conducted an internal check and had talked to the staff of Bazar-Korgon police station about compliance with internal regulations (see paras. 93, above). This internal check did not constitute an effective investigation as it was an internal closed procedure with no outside scrutiny or imposition of disciplinary sanctions, and which discussed internal regulations rather than violations of Kyrgyz law.

346. Mr. Toktakunov refused to be intimidated into ceasing his involvement with Mr. Askarov's case and continued as his defence counsel. However, these recurring violent threats and attacks limited his opportunities to go to the Bazar-Korgon police station regularly or for any extended period of time. On 2 August 2010, he was required to leave the police station after only 10 minutes with Mr. Askarov because of threats from the deceased police officer's relatives. The threats and violence continued during the trial and initial appeal, further limiting the ability of Mr. Toktakunov (and the other defendants' counsel) to adequately represent their clients and ensure a fair trial.
347. The repeated harassment, threats of violence and death, and physical attacks amounted to a violation of Mr. Askarov's right to practical and effective legal assistance under Article 14(3)(b).

#### Violation of the Presumption of Innocence

348. The public statements made by Kyrgyz officials prejudging the outcome of Mr. Askarov's trial on at least two occasions, violating his right to be presumed innocent until proven guilty under Article 14(2) of the ICCPR.
349. Article 14(2) states that "[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law". This Committee has clarified that under Article 14(2), "[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused".<sup>619</sup>
350. Applying this principle, the Committee has repeatedly found a violation of the presumption of innocence in cases in which public officials make statements concerning a person charged with a criminal offence which reflect an assumption that he is guilty before this has been proved according to law.<sup>620</sup> For example, where the head of the police announced that he "was sure" of the accused's guilt before the trial had begun, this announcement was broadcast on television, and the investigator in the case also pronounced the accused guilty in public meetings before the court hearing, the Committee considered that the accused's presumption of innocence had been violated because the authorities failed to exercise the restraint that Article 14(2) required of them.<sup>621</sup>
351. In this case, Mr. Askarov's right to be treated as innocent until proven guilty by a court of law was violated at least twice prior to his trial. The first breach occurred when the Bazar-

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<sup>619</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 30.

<sup>620</sup> See for example: *Mwamba v. Zambia*, UNHRC, Views of 30 April 2010, UN Doc. CCPR/C/98/D/1520/2006, para. 6.5; *Karimov and Nursatov v. Tajikistan*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1108&1121/2002, para. 7.4; *Larrañaga v. The Philippines*, UNHRC, Views of 14 September 2006, UN Doc. CCPR/C/87/D/1421/2005, para. 7.4.

<sup>621</sup> *Gridin v. Russia*, UNHRC, Views of 18 July 2000, UN Doc. CCPR/C/69/D/770/1997, paras 3.5, 8.3

Korgon District Court issued its decision on Mr. Askarov's pretrial detention. The Court justified its decision to hold Mr. Askarov in custodial detention pending his trial on the grounds that if it were not ordered, then Mr. Askarov could commit "other grave crimes". Despite the fact that this was only a preliminary hearing and questions of guilt and innocence were not in issue, the Court went on to publicly and unambiguously prejudge the guilt of Mr. Askarov by stating that "Because of his actions police officers received bodily injuries and police captain M. Sulaimanov was killed" (see para. 51, above).

352. The second breach occurred when the Jalal-Abad oblast Prosecutor issued a written press release stating that "the guilt of Mr. Askarov in committing the charged crimes has been fully proved by case file materials, in particular by witness statements of police officers, by witness statements from regular persons, by records of confrontation".<sup>622</sup> This statement, made without qualifications or reservations, was an express and unequivocal declaration that Mr. Askarov was guilty of criminal offences prior to any trial (see para. 57, above).
353. These statements of both the Bazar-Korgon District Court and the Jalal-Abad oblast Prosecutor publicly declared that Mr. Askarov was guilty of the crimes he had been accused of just two days after he was charged, well before his trial, let alone the verdict. They thus undermined the presumption of innocence and violated Article 14(2) of the ICCPR.

#### **H. Violation of Fair Trial Rights**

354. Mr. Askarov was denied a fair hearing by an independent and impartial tribunal throughout the trial and appeal process, in violation of Article 14(1) of the ICCPR. The trial was conducted in an atmosphere of violence and intimidation, as a result of which Mr. Askarov and his counsel were unable to present their case or have it considered on equal terms with the prosecution. In particular, they were unable to cross-examine prosecution witnesses and call defence witnesses, in violation of Article 14(3)(e).
355. Mr. Askarov was also denied a substantive review of his conviction and sentence at the appellate and Supreme Court levels, in violation of Article 14(5). Because he had not been able to participate effectively in the trial or appellate court proceedings, the failure to facilitate Mr. Askarov's attendance at the Supreme Court hearing was also a further violation of Article 14(3)(d).

##### 1. Violation of the right to a fair hearing by an independent and impartial tribunal

356. The conduct of Mr. Askarov's trial contravened his right to a fair hearing by an impartial and independent tribunal under Article 14(1) of the ICCPR. The hearing was conducted in an atmosphere of intense pressure and intimidation, and the judge failed to control the courtroom or take measures to ensure the defendants' safety. As a result, Mr. Askarov was unable to fully present his case or have it considered on equal terms to the prosecution, in violation of equality of arms. The judge failed to rectify this situation and repeatedly showed bias for the prosecution, demonstrating a lack of impartiality and independence. As a result, the trial amounted to a denial of justice.
357. Article 14(1) of the ICCPR provides that "[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal

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<sup>622</sup> Exhibit 24(a): Press release of the Jalal-Abad oblast prosecutor's office, 18 June 2010.

established by law”. This Committee has upheld these requirements as constituting “an absolute right that may suffer no exception”.<sup>623</sup>

*The Toleration of a Hostile Atmosphere Prevented a Fair Trial*

358. This Committee has explained that a fair hearing “entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive”.<sup>624</sup> It has clarified that this right to an effective defence is impinged where the accused is “faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court ... or is exposed to other manifestations of hostility with similar effects”.<sup>625</sup> In one case, it held that a trial court’s failure to control a hostile atmosphere against the defence violated the author’s right to a fair trial under Article 14(1).<sup>626</sup> In another case, it found a violation of Article 14(1) where a court failed to guarantee equality of arms between the parties in the production of evidence.<sup>627</sup> The European Court of Human Rights has similarly held that equality of arms “implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent”.<sup>628</sup>
359. The trial of Mr. Askarov was characterized by a consistently hostile and intimidating atmosphere inside and outside the courtroom, which was tolerated by the trial judge (see paras. 99 - 101 and 111 - 112, 129 and 131, above). Prior to the commencement of the trial, Mr. Toktakunov petitioned the Jalal-Abad regional court to move the hearing to a different district court for security considerations, given that relatives of the deceased police officer had threatened Mr. Askarov’s lawyers and physically attacked them. Other lawyers also requested a change of trial location on the first day. All of these requests were denied.
360. The proceedings were, to a large extent, dominated by the actions of the deceased police officer’s relatives who threatened and physically attacked the defendants and their lawyers throughout proceedings. On the first day of the trial, the courtroom was filled with police officers and relatives of the deceased police officer, meaning that relatives of the accused were not able to enter the courtroom. The relatives proceeded to attack the defence lawyers in the presence of police, who did not intervene. During subsequent hearings, the intimidation continued, and the relatives verbally abused Mr. Toktakunov by saying they would kill his family and eat his children (see paras. 129 and 131, above). Later in the trial, posters with anti-Uzbek slogans demanding the execution of the defendants were hung on the courthouse doors.
361. The Kyrgyz trial judge and court personnel completely failed to control the hostile and violent atmosphere in the courtroom. They repeatedly failed to intervene to control the

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<sup>623</sup> *Gonzalez del Rio v. Peru*, UNHRC, Views of 28 October 1992, UN Doc. CCPR/C/46/D/263/1987, para. 5.1.

<sup>624</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 25.

<sup>625</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 25.

<sup>626</sup> *Gridin v. Russia*, UNHRC, Views of 20 July 2000, UN Doc. CCPR/C/69/D/770/1997, para. 8.2.

<sup>627</sup> *Jansen-Gielen v. The Netherlands*, UNHRC, Views of 3 April 2001, UN Doc. CCPR/C/71/D/846/1999, para. 8.2.

<sup>628</sup> *Dombo Beheer BV v The Netherlands*, ECtHR, Judgment of 27 October 1993, para. 33; *Wierzbicki v. Poland*, ECtHR, Judgment of 18 June 2002, para. 39; *Grayznov v. Russia*, ECtHR, Judgment of 12 June 2012, para. 57.

constant verbal attacks and regular physical outbursts against defence counsel, and made no effort to protect the defence from these interjections and assaults. Some court observers reported that the judge himself appeared intimidated by the supporters of the victim (see para. 99, above).

362. The impact of this atmosphere of intimidation was that defence counsel were unable to present their case and participate fully in the proceedings or on equal terms with the prosecution. In addition to being unable to call witnesses for fear of their safety or effectively cross-examine prosecution witnesses due to interjections from the crowd, defence counsel were also restricted in the submissions and applications which they could make. They were forced to be very cautious in their submissions, at times refraining from making applications or actively engaging at all.<sup>629</sup> On the first day they were not provided any opportunity to make petitions,<sup>630</sup> and even those applications which were filed were largely ignored (see paras. 102 and 112, above).<sup>631</sup>

*The Trial Judge was not Impartial*

363. This Committee has described the requirement of impartiality under Article 14(1) as follows: first, “judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other”;<sup>632</sup> and secondly, the tribunal must appear to a reasonable observer to be impartial.<sup>633</sup>
364. While the Committee generally leaves the evaluation of facts and evidence to the courts of State parties, it foregoes that policy where “it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.”<sup>634</sup>
365. The conduct of the trial judge in Mr. Askarov’s case reveals an overt preference for the prosecution, in violation of the equality of arms and impartiality principles that underpin a fair trial. According to an observer of Mr. Askarov’s trial, the Judge “held the position of the prosecution, failed to ensure competitiveness of the parties, supported the side of the victims, and openly put pressure on the defendant’s lawyers”.<sup>635</sup> Mr. Toktakunov considered that the Judge went “beyond the role of arbiter and played up to the prosecution”.<sup>636</sup> With one prosecution witness, the Judge assisted the prosecution by telling

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<sup>629</sup> Exhibit 79: ICJ Report, paras. 89 and 99; Exhibit 6: Statement of Nurbek Toktakunov, 12 July 2012, paras. 43, 45 and 59.

<sup>630</sup> Exhibit 80: Trial observation report by Kylym Shamy, 2 September 2010, available at <http://ksh.kg/?p=227>.

<sup>631</sup> Exhibit 2: Statement of Asimjan Askarov, para. 60; Exhibit 79: ICJ Report, paras. 90, 91.

<sup>632</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 21 (citing *Karttunen v. Finland*, UNHRC, Views of 23 October 1992, UN Doc. CPPR/C/46/D/387/1989, para. 7.2).

<sup>633</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 21.

<sup>634</sup> *Arutyuniantz v. Uzbekistan*, Views of 13 April 2005, UN Doc. CCPR/C/83/D/971/2001, para 6.5; *Mahmoud Walid Nakrash and Liu Qifen v. Sweden*, Views of 19 November 2008, UN Doc. CCPR/C/94/D/1540/2007, para. 7.3.

<sup>635</sup> Exhibit 86: Human Rights Center ‘Citizens against Corruption’, ‘Report of Monitoring of Court Hearings on Appeal, Jalala-Abad Region al Court’, 13 November 2010.

<sup>636</sup> Exhibit 46: Exhibit 46: Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010.

them what questions to ask, despite the fact that the lawyer had concluded his questioning (see paras. 114, above).

366. The judge did not control the crowd when they interrupted the proceedings or threatened the defendants and their lawyers, nor did the court attempt to redress the imbalance that this caused. To the contrary, the judge responded to one of the defence lawyers' petitions by threatening to revoke their licences (see paras. 102, above).

## 2. Violation of the right to call and to cross-examine witnesses

367. One of the most significant impacts of the atmosphere of intimidation was the inability of Mr. Askarov's counsel to cross-examine prosecution witnesses and call defence witnesses, in violation of Article 14(3)(e).
368. Article 14(3)(e) of the ICCPR provides that a defendant shall be entitled "To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." This Committee has explained that "[a]s an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel".<sup>637</sup>

### *The Defence Could not Effectively Cross-examine Prosecution Witnesses*

369. The fairness of a trial is compromised where defence counsel is unable to effectively cross-examine prosecution witnesses.<sup>638</sup> This Committee has found a violation of Article 14(3)(e), where defence cross-examination of prosecution witnesses was "prematurely terminated" by the trial judge<sup>639</sup> and where the defence did not have the opportunity to cross-examine the main complainant in the case.<sup>640</sup>
370. The continued attacks, threats and pressure in the courtroom meant that Mr. Toktakunov could not fully exercise his powers as defence counsel. In particular, he was denied a proper opportunity to question and challenge prosecution witnesses during the trial. He and the other defence lawyers were threatened and attacked in the courtroom throughout their attempted questioning. In these conditions, it was not possible for the defence team to attempt effective cross-examination or conduct any meaningful form of defence. The judge failed to institute counter-balancing measures in order to facilitate cross-examination, assisted prosecution lawyers in the questioning of their witnesses, and failed to prevent supporters and relatives of the deceased police officer from asking questions of the defendants (see para. 114, above).
371. Mr. Toktakunov's ability to cross-examine the prosecution witnesses was further damaged by the presence of the witnesses in the courtroom throughout the trial. In a trial where the defence case was that false allegations had been made by the police, the court's failure to exclude certain prosecution witnesses from the courtroom during portions of the trial fatally tainted their testimony, and deprived cross-examination as to evidential inconsistencies of its value in ascertaining the facts.

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<sup>637</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 39.

<sup>638</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para. 39.

<sup>639</sup> *Larranga v. The Phillipines*, UNHRC, Views of 24 July 2006, UN Doc. CCPR/C/87/D/1421/2005, para. 7.7.

<sup>640</sup> *Dugin v. Russia*, UNHRC, Views of 5 July 2004, UN Doc. CCPR/14/1/815/1998, para. 9.3.

*Defence Witnesses Were Prevented from Attending and Giving Evidence*

372. Judges in criminal proceedings are required to actively facilitate the defence's ability to obtain the attendance and examination of its witnesses. A violation of Article 14(3)(e) occurs where the failure of a defence witness to give evidence in court is attributable to state authorities. This Committee has required judges to put measures in place, both legal and practical, to secure the attendance of defence witnesses.<sup>641</sup> Similarly, the European Court of Human Rights has held that where the defence properly calls witnesses, a court is under a positive obligation to take appropriate steps to ensure their appearance.<sup>642</sup> Where necessary and appropriate, for example where there are potential threats to the life or security of a witness, this may even include having the witness appear on an anonymous basis, provided that other safeguards are in place.<sup>643</sup>
373. The Court heard numerous witnesses for the prosecution but none for the defence. Three defence witnesses attended the trial but did not testify, because they were intimidated by the violent atmosphere in the courtroom. The defence lawyers made the decision not to call the witnesses on the basis that they could be endangered by giving evidence. When defence witnesses appeared at the courthouse, they were pushed away by relatives of the victim (see paras. 114 - 117 and 131, above).
374. Other defence witnesses did not even attend the trial and appeal hearings because they were too frightened to testify and because the courts had not initiated any protective measures for defence witnesses. Ms. Aziza Abdurasulova wanted to appear as a witness but was informed that if she did so, she would not get out alive (see paras. 115 and 131, above). A number of the witnesses who submitted notarized statements to the Supreme Court explained that they could not testify at trial because of intimidation from police or relatives of the victim (see para. 144, above): one witness kept silent because police officials had said that measures would be taken against anyone who testified that Mr. Askarov was not present during the riots; and another states that relatives of the deceased police officer prevented him from testifying during the investigation or trial.<sup>644</sup>
375. The defence witnesses who were prevented from giving evidence included those who could have confirmed that Mr. Askarov was somewhere else at the time of the killing. For example, the witnesses mentioned above could have testified that they had seen Mr. Askarov at his home on the morning that the police officer was killed.<sup>645</sup> Alibi evidence for other defendants, including evidence that one was in Uzbekistan at the time that the police officer was killed, also could not be presented or was ignored by the court.<sup>646</sup> The judge also refused to call as witnesses the imam and border guards who witnessed Mr. Askarov's conversation with the Akim of Bazar-Korgon the day before the killing, or summons General Isakov whom Askarov warned about possible riots and suspicious cars (see paras. 116, above).

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<sup>641</sup> *Grant v. Jamaica*, UNHRC, Views of 12 August 1994, UN Doc. CCPR/C/50/D/353/1988.

<sup>642</sup> *Sadak v. Turkey*, ECtHR, Judgment of 17 July 2001, para. 67.

<sup>643</sup> UNHRC, *Concluding Observations on The Netherlands* (2001), UN Doc. CCPR/CO/72/NET, para. 12; *Doorson v. The Netherlands*, ECtHR, Judgment of 26 March 1996.

<sup>644</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011: [REDACTED]

<sup>645</sup> Exhibit 54: Bundle of 13 notarised witness statements, 3-4 February 2011: [REDACTED]

<sup>646</sup> Defendant Rasulov; discussed in Philip Shishkin, *A Murder in Kyrgyzstan*, 10 June 2011, page 4, available at <http://asiasociety.org/countries/conflicts/murder-kyrgyzstan>.

376. Although the statements of several defence witnesses were subsequently submitted to the Supreme Court in written form, the Supreme Court declined to return the case to the trial court and did not provide any evaluation of the witnesses' statements in its decision. Thus, this proceeding could not rectify the detrimental effect on the fairness of the trial created by the initial intimidation of the witnesses.

### 3. Violation of the right to an effective appeal

377. Mr. Askarov was denied a substantive review of his conviction and sentence according to law at both the appellate and Supreme Court levels, in breach of Article 14(5). In addition, given that he had not been able to participate effectively in the trial and appellate court proceedings, the failure to permit Mr. Askarov's attendance at the Supreme Court hearing was a further violation of his rights under Article 14(3)(d).

#### *The Appeal Proceedings Failed to Provide a Substantive Review of the Conviction*

378. Article 14(5) of the ICCPR states that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". This right "imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case."<sup>647</sup>

379. This Committee has explained that Article 14(5) does "not require an appellate court to proceed to a factual retrial, but that it conduct an evaluation of the evidence presented at the trial and of the conduct of the trial"<sup>648</sup>. It has concluded that Article 14(5) is violated where the review is limited to an evaluation of whether "the evidence, as assessed by the first instance judge, was lawful, without assessing the sufficiency of the evidence in relation to the facts that would justify the conviction and sentence imposed"<sup>649</sup>. In one case, this Committee held that a Supreme Court's consideration of whether it was sufficient for the lower court to base its conviction on the facts it had before it, rather than verifying the validity of the evidence brought before the lower court, did not constitute a review of the conviction and sentence within the meaning of Article 14(5).<sup>650</sup>

380. In Mr. Askarov's case, the regional Appeal Court and Supreme Court did not consider the allegations of torture, ill-treatment, pressure and intimidation that he and his lawyer had raised in relation to the investigation and trial (see paras. 142 and 148 to 150, above). The Appeal Court did not examine these claims in any detail: it simply stated that allegations of torture and procedural violations during the investigation were disproved by the evidence, without mentioning what evidence, and that claims of torture were subject to appropriate assessment during the investigation, again without explaining how. The Supreme Court similarly rejected claims of torture, stating that there was no evidence, that the judge had entrusted a medical examination to the prosecutor which complied with the law, and accepting the assessment of the Ministry of Internal Affairs that there were no violations.

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<sup>647</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para.48.

<sup>648</sup> *Juma v. Australia*, UNHRC, Views of 28 July 2003, UN Doc. CCPR/C/78/D/984/2001, para.7.5.

<sup>649</sup> *Carpintero Uclés v. Spain*, UNHRC, Views of 22 July 2009, UN Doc. CCPR/C/93/D/1364/2005, para.11.3.

<sup>650</sup> *Martínez v. Spain*, UNHRC, Views of 23 November 2009, UN Doc. CCPR/C/97/D/1363/2005, para. 9.3. See also *Rolando v. Philippines*, UNHRC, Views of 8 December 2004, UN Doc. CCPR/C/82/D/1110/2002; *Perera v. Australia* UNHRC, Views of 28 March 1995, UN Doc. CCPR/C/82/D/1110/2002.

As a result, the courts continued to rely on the statements of at least two of Mr. Askarov's co-defendants that had been taken during the early stages of the investigation.

381. The courts also failed to examine claims regarding the attacks on defence counsel during the investigation, and the continued threats and intimidation during the trial. The Appeal Court ignored these claims entirely, and thus never considered the impact this had on the ability of the defendants to question the police witnesses who formed the bulk of the evidence against them. The Supreme Court similarly rejected Mr. Toktakunov's claims that he was repeatedly attacked during the investigation, affecting his ability to prepare Mr. Askarov's defence, as "not grounded," without further explanation. The Court further claimed that after a warning from the judge, the relatives stopped interrupting proceedings and threatening the lawyers and defendants, despite extensive reports that such interruptions continued unabated.
382. The courts finally refused to consider the inability of the defence to call evidence. The Appeal Court did not examine in detail the claims of intimidation of defence witnesses and inability to call evidence. This argument was dismissed as unfounded on the basis of an unsupported assertion that the Trial Court told the prosecutor to provide police protection to the witnesses. However, there is no mention of this in the trial judgment, and this claim is contradicted by trial observers and the witnesses themselves, who say the police stood by while they were attacked by relatives and in some cases participated in the intimidation. The Supreme Court ignored this argument entirely: although it accepted the notarized witness statements submitted by Mr. Askarov's lawyers showing that he was not present at the time of the killing and that the witnesses had been prevented from testifying, the Supreme Court made no mention of these statements or of the circumstances which prevented the witnesses from testifying at the trial. In failing to examine the inability of the defence to call witnesses and the contradiction between the prosecution case and this alibi evidence that corroborated Mr. Askarov's version of events, which could be only be presented for the first time before the Supreme Court, the Supreme Court failed to conduct a substantive review of Mr. Askarov's conviction and sentence in violation of Article 14(5).

*Mr. Askarov Should have been Permitted to be Present at the Appeal Hearings*

383. Article 14(3)(d) of the ICCPR enshrines the right of an accused "in the determination of any criminal charge against him ... to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing". This Committee has held that the provision requires that accused persons are entitled to be present during their trial,<sup>651</sup> and has extended this rule to certain appellate proceedings. Though the Committee has held that convicted persons are not always entitled to oral hearings on appeal,<sup>652</sup> it has also found a violation of the right to appeal under Article 14(5) where appellate hearings were held but the appellant was not permitted to attend them. For example, it found a violation of Article 14(5) where a pre-trial detention appeal hearing took place in the presence of the prosecutor but without the author or his lawyers, even though the author requested to be present, noting that the State party had "failed to explain the reasons why it did not allow the participation of the author or his lawyers at the proceedings at the Supreme Court".<sup>653</sup>

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<sup>651</sup> UNHRC, *General Comment 32, Right to equality before the courts and tribunals and to a fair trial*, 2007, para.36.

<sup>652</sup> *Bryhn v. Norway*, UNHRC, Views of 2 November 1999, UN Doc. CCPR/C/67/D/789/1997, para. 7.2.

<sup>653</sup> *Kulov v. Kyrgyzstan*, UNHRC, Views of 26 July 2010, UN Doc. CCPR/C/99/1369/2005, para. 8.8.

384. The European Court of Human Rights has also examined the right to attend appellate hearings, and has similarly held that while the right to attend appellate hearings is not absolute, certain factors may make attendance necessary. These include special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in light of the issues to be decided and their importance for the person, i.e. the "gravity of what was at stake for the applicant".<sup>654</sup> The European Court has also found that applicants' fair trial rights may be violated by their absence at appellate hearings even though their lawyers were present, based on their assessment of "what was at stake for the applicant" and the "issues to be determined" by the appellate court.<sup>655</sup>
385. In this case, Mr. Askarov should have been permitted to attend his Supreme Court hearing. First, the "special feature" of this proceeding is that it was the first judicial process concerning Mr. Askarov's criminal charges that at least to a degree followed the legal procedure. It was the first time that his defence counsel were able to present evidence of Mr. Askarov's innocence, which they had not been able to submit to the trial and appeal courts due to the atmosphere of intimidation infecting them. The Supreme Court judges were also less vulnerable to possible retaliation by relatives of the deceased policemen than those in the prior courts, as fewer relatives and police were present due to the remoteness of the Supreme Court from Bazar-Korgon.
386. Second, the "gravity of what was at stake" for Mr. Askarov at the Supreme Court hearing cannot be overstated. The issues being decided – concerning his conviction for murder and a sentence of life imprisonment – were of the highest significance. Thus, Mr. Askarov should have been given an opportunity – his first opportunity – to participate in the assessment of the charges against him, to speak without the risk of retaliation of the police and participate in the presentation of evidence in his defence. As he had not been allowed an opportunity to speak during his trial or appeal, this presented the only chance for Mr. Askarov to address a court, and the public, with regard to his case – an opportunity which was extremely important for Mr. Askarov's reputation and his work as respected human rights defender.
387. Even though Mr. Askarov's lawyers were present, he too was entitled to an opportunity to participate at the Supreme Court hearing, given the importance of the issues to be decided and the lack of prior opportunities to participate effectively in his defence. However, he was excluded from his Supreme Court appeal, on the formal basis that Kyrgyz legal procedure did not require him to be present (see para. 141 and 147 above).
388. The failure of the appeal court and Supreme Court to undertake a substantive review of Mr. Askarov's conviction and sentence, compounded by the decision not to facilitate Mr. Askarov's presence at the Supreme Court hearing, gave rise to breaches of Article 14(5) and Article 14(3)(d).

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<sup>654</sup> *Jelcovas v. Lithuania*, ECtHR, Judgment of 19 July 2011, para. 108.

<sup>655</sup> *Botten v. Norway*, ECtHR, Judgment of 19 February 1996, paras. 14-19, 70, 48-53. That case involved the appellate court reviewing evidence and convicting the application without summoning or hearing from him in person: "what was at stake for the applicant" included adverse effects on his professional career; and the "issues to be determined" by the appellate court included assessment of the facts elicited in the court of first instance, as well as questions of the applicant's personality and character relevant to sentencing. The ECtHR held that the appellate court was under a duty to take positive measures" to "summon the applicant and hear evidence from him directly before passing judgment".

## **I. Violation of Mr. Askarov's Rights as a Human Rights Defender**

389. International law requires heightened protection for human rights defenders, given the risks they frequently face in promoting human rights. The legal process against Mr. Askarov – his detention, interrogation and torture, the physical attacks on his lawyers and relatives, the threats against members of his immediate family, his cruel and inhuman treatment during trials, and the failure to effectively investigate the conduct of his persecutors – reveals not only a failure to protect Mr. Askarov, but a concerted effort to silence him and put an end to his work as a human rights defender who reported for more than a decade on police abuse. In addition to his discriminatory detention being a violation of Article 9 (see paras. 296 - 299, above), this persecution also violated the Kyrgyz Republic's obligations to protect human rights defenders and Mr. Askarov's freedom of expression under Article 19.

### The Duty to Protect Human Rights Defenders

390. The positive obligation on governments to respect and ensure human rights, embodied in the UN Declaration on the Right to Promote Human Rights, includes a duty to protect human rights defenders in their exercise of the right to oppose “activities and acts ... attributable to States that result in violations of human rights and fundamental freedoms.”<sup>656</sup> This duty includes protection against “any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action”,<sup>657</sup> and falls under States' general obligation to prevent ICCPR violations.<sup>658</sup>
391. A State's duty to safeguard human rights defenders is particularly important given the heightened risk they face as a result of their work. The UN Special Rapporteur on the situation of human rights defenders has stated that defenders are likely to be arrested and prosecuted on false charges, and are often denied access to a lawyer, medical care, and judicial process when in detention.<sup>659</sup> The Special Rapporteur also noted that defenders trying to gather and publish information on violations of human rights are particularly likely to be the targets of “killing, harassment and threats.”<sup>660</sup>
392. Many violations of Mr. Askarov's rights are directly related to his work as a human rights defender. Mr. Askarov had spent many years working to obtain, document and disseminate information about human rights abuses and law enforcement corruption in Bazar-Korgon and other police stations in southern Kyrgyzstan.<sup>661</sup> For more than a decade, Mr. Askarov worked as the director of *Vozdukh*, documenting and reporting widespread police abuse of detainees in Kyrgyz prisons. As a result of some of his reporting, investigators and police officers were fired or criminally prosecuted (see paras. 19 - 21, above). He has since been

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<sup>656</sup> Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“Declaration on the Right to Promote Human Rights”), Article 12; see also ICCPR Article 2(1).

<sup>657</sup> *Ibid.*

<sup>658</sup> See e.g. ICCPR Article 2; UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 8.

<sup>659</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. A/HRC/13/2230, December 2009, para 31. (Certain categories of defenders, such as members of human right NGOs, journalists, women defenders, and defenders of lesbian, gay, bisexual and transgender rights are subject to particularly virulent threats, attacks and intimidation; see para. 55, 49, 47)

<sup>660</sup> *Ibid.*, paras. 40, 53.

<sup>661</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>.

awarded the Homo Homini Award for his “long-term and dangerous work in human rights promotion ... despite threats, detention and imprisonment along with physical abuse”, and the Committee to Protect Journalists’ 2012 Press Freedom Award because he was “arrested and jailed for [his] critical reporting” (see paras. 23 and 184, above). At the time of his arrest, Mr. Askarov was in the process of documenting the destruction in the Uzbek community caused by ethnic clashes in Southern Kyrgyzstan, including the role of the authorities in the clashes (see para. 33, above).

393. The circumstances of this case demonstrate that Mr. Askarov’s arrest and detention were politically motivated and connected with his human rights activities. The repeated violations of his rights during his detention and prosecution, including blatant violations of national and international fair trial standards, all strongly suggest that the legal process against him was intended not to effectively investigate a crime, but to silence a well-respected local human rights monitor and outspoken advocate. When he was first detained and beaten, police officers said “now, your turn has come to serve us” (see para. 36, above). Prosecutor Turajanova later told Mr. Askarov that the Criminal Procedure Code that he had cited when complaining about police misconduct would not protect him in police detention, and his state-appointed lawyer accused Mr. Askarov of writing critical articles about the police and said that if Mr. Askarov had not provided information to external sources then this would not be happening (see paras. 44 and 50, above). The head of the temporary detention facility at Suzak police station later instructed Mr. Askarov not to read lectures on human rights. Police efforts to facilitate the rape of Mr. Askarov by his cellmates failed due to the cellmates’ recognition that he was a “fearless defender against the police” (see paras. 83, above). The Kyrgyz Human Rights Ombudsman’s investigation concluded that there was no evidence to link Mr. Askarov to the alleged crime, and that the charges against him were clearly politically motivated.<sup>662</sup>
394. International human rights organizations have extensively documented the connection between Mr. Askarov’s human rights work and his subsequent persecution. Amnesty International has called Mr. Askarov a prisoner of conscience, and has stated that his detention, torture and denial of a fair trial were examples of the risks faced by Uzbek human rights defenders in Kyrgyzstan.<sup>663</sup> Human Rights Watch has affirmed that Mr. Askarov’s detention and prosecution were a result of his efforts to document the failure of the police to prevent widespread violence during the ethnic conflict in 2010;<sup>664</sup> HRW described his trial as resembling “vengeance” rather than a fair judicial process.<sup>665</sup> The International Partnership for Human Rights has declared that “[t]here are serious grounds to believe that the charges against Askarov are politically motivated and he is being punished

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<sup>662</sup> Exhibit 88: Frontline Defenders, “Kyrgyzstan: Politics Trump Justice”, 20 December 2011, available at <http://www.frontlinedefenders.org/node/16958>.

<sup>663</sup> Amnesty International, “Partial Truth and Selective Justice, the aftermath of the June 2010 violence in Kyrgyzstan”, 16 December 2010, available at <http://www.amnesty.org/en/library/asset/EUR58/022/2010/en/2e04ab9b-73e6-46a1-98d7-563198e7255e/eur580222010en.pdf>

<sup>664</sup> Human Rights Watch, “Letter to Prosecutor General Ibraev urging to release Azimzhan Askarov”, 17 June 2010, available at <http://www.hrw.org/news/2010/06/17/letter-prosecutor-general-ibraev-urging-release-AzimjanAzimjan-askarov>.

<sup>665</sup> Human Rights Watch, “Kyrgyzstan: free Human rights defender, ensure fair trial”, 15 September 2010, <http://www.hrw.org/news/2010/09/15/kyrgyzstan-free-human-rights-defender-ensure-fair-trial>.

for his human rights work.”<sup>666</sup> The Committee to Protect Journalists recently awarded Mr. Askarov its 2012 Press Freedom Award, noting that he was “arrested and jailed for [his] critical reporting” and “is serving a life term in prison in connection with his coverage of official wrongdoing and abuse”.<sup>667</sup> In this case, the Kyrgyz government did not merely fail to protect Mr. Askarov from a known, heightened risk in the conduct of his human rights work. Rather, the arbitrary detention, torture, conviction and sentence of Mr. Askarov were actively directed at preventing him from carrying on his human rights work. The Kyrgyz government therefore violated its obligation to protect his rights as a human rights defender.

### Freedom of Expression

395. One of the most important rights for human rights defenders is the freedom of expression. Article 19 of the ICCPR provides: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds”. The Declaration on the Right to Promote Human Rights highlights the importance of this principle in the context of human rights defenders, stating that everyone has the right, both individually and in association with others: to communicate with non-governmental or intergovernmental organizations; to know, seek, obtain, receive and hold information about human rights; to publish, impart or disseminate views, information and knowledge on all human rights; and to develop and discuss new human rights ideas and principles and to advocate their acceptance.<sup>668</sup>
396. This Committee has found that “the right for an individual to express his political opinions, including his opinions on the question of human rights, forms part of the freedom of expression guaranteed by Article 19 of the Covenant.”<sup>669</sup> Numerous Committee cases have confirmed that protected expression includes political expression.<sup>670</sup>
397. The Inter-American Commission has recognized that harassment and intimidation tactics against “social communicators,” including human rights activists, violate the right to freedom of expression.<sup>671</sup> Such tactics obstruct the investigation not only of specific abuses; they also create an atmosphere of fear, which in turn produces a chilling effect on government criticism and the reporting of human rights abuses.<sup>672</sup>
398. The detention, torture and conviction of Mr. Askarov violated his right to freedom of expression under Article 19 of the ICCPR because they were carried out in order to silence a critical voice of police and government abuses in the Kyrgyz Republic rather than as part

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<sup>666</sup> International Partnership for Human Rights, “Appeal to the international community: Call for a new, fair review of the case of human rights defender Azimzhan Askarov sentenced to life in Kyrgyzstan”, 16 September 2010, available at [http://www.iphronline.org/kyrgyzstan\\_askarov\\_20100916\\_e.html](http://www.iphronline.org/kyrgyzstan_askarov_20100916_e.html).

<sup>667</sup> Exhibit 90: Committee to Protect Journalists, “International Press Freedom Awards: Honoring tenacity and courage”, 13 September 2012, available at <http://cpj.org/awards/2012/honoring-tenacity-and-courage.php>

<sup>668</sup> Declaration on the Right to Promote Human Rights, Articles 5, 6 and 7.

<sup>669</sup> *Kivenmaa v. Finland*, UNHRC, Views of 31 March 1994, UN Doc. CCPR/C/50/D/412/1990, para. 9.3.

<sup>670</sup> See *Nqalula Mpandanjila et al. v. Zaire*, UNHRC, Views of 26 March 1986, Communication No. 138/1983; *Kalenga v. Zambia*, UNHRC, Views of 26 March 1986, UN Doc. CCPR/C/48/D/326/1988; *Jaona v. Madagascar*, UNHRC, Views of 1 April 1985, Communication No. 132/1982; and *Aduayom et al. v. Togo*, UNHRC, Views of 12 July 1996, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990.

<sup>671</sup> Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Declaration of Principles on Freedom of Expression*, October 2000, Principle 9, available at <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>

<sup>672</sup> *Hector Felix Miranda v. Mexico*, IACtHR, Judgment of 1998, para. 52.

of a legitimate criminal investigation. On the day of his detention, a local judge suggested to Mr. Askarov that his documentation of the violence in South Kyrgyzstan was a “state secret and nobody should learn about it”. After Mr. Askarov’s arrest, the police repeatedly asked the location of his video and camera, and confiscated all video footage and documents that Mr. Askarov had used to record the destruction in Bazar-Korgon and fatalities following the June 2010 violence (see paras. 39 and 54, above). As his recording of the aftermath of the violence included the possible role of the authorities in the clashes, silencing him was only more important for the local police and prosecutors.

399. In addition, when he was taken in for questioning, police officers said they wanted to “get even” with Mr. Askarov “because of the articles criticizing us”. During a beating before his appeal hearing, one officer clearly articulated the aim of the Kyrgyz authorities to silence Mr. Askarov: “[i]f you did not write against police, you would not be standing here and we would not be beating you” (see para. 125, above). He was not allowed to watch the beatings of fellow detainees on the basis that he is a “writer, and will start writing”. The Committee to Protect Journalists confirms that Askarov’s conviction is a “clear attempt to suppress reports of abuse by Kyrgyz authorities and sets a chilling precedent for freedom of expression in the country”.<sup>673</sup> Mr. Askarov’s case is the most high-profile example of the broader eradication of the Uzbek language media in the aftermath of the 2010 violence.<sup>674</sup>
400. The Kyrgyz government’s arrest, detention, torture, conviction and sentencing of Mr. Askarov were thus carried out to silence a prominent government watchdog, in violation of Article 19.

## VIII. REMEDIES

401. In light of the facts and submissions above, Mr. Askarov respectfully requests that the Committee:
- a) declare that the Kyrgyz Republic has violated Article 7 of the ICCPR as a result of its torture of Azimjan Askarov, and also as a result of its failures to establish safeguards against torture, to investigate such torture, and to provide an effective remedy.
  - b) declare that the Kyrgyz Republic has violated Article 9, along with Articles 2 and 26, of the ICCPR as a result of its unlawful and arbitrary detention of Mr. Askarov;
  - c) declare that the Kyrgyz Republic has violated Article 14 of the ICCPR by publically declaring his guilt prior to trial, denying him prompt access to counsel and adequate time to prepare his defence, preventing counsel from adequately representing and calling and questioning witnesses, and denying him a fair appeal;
  - d) declare that the Kyrgyz Republic has violated his rights as a human rights defender, including under Article 19 of the ICCPR, because his arbitrary detention, torture and unjust judicial process constituted retaliation for his work exposing abuses by the police and was designed to silence his dissenting voice and prevent him continuing in this work.

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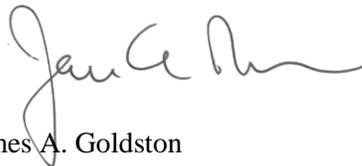
<sup>673</sup> Committee to Protect Journalists, “Kyrgyzstan Supreme Court Upholds Askarov Sentence”, 20 December 2011, available at <http://cpj.org/2011/12/kyrgyzstan-supreme-court-upholds-askarov-sentence.php>.

<sup>674</sup> Committee to Protect Journalists, *In Kyrgyzstan, injustice and torture in Askarov case*, 12 June 2012, p. 4, available at <http://cpj.org/reports/kyrgyzstan2012-english.pdf>

402. Mr. Askarov further requests that the Committee:

- a) request that the Kyrgyz Republic quash his conviction that was rendered following a trial and appeal process that lacked basic safeguards and fell short of international fair trial standards;
- b) request that the Kyrgyz Republic immediately release Mr. Askarov;
- c) request that the Kyrgyz Republic provide a full medical examination and medical treatment to Mr. Askarov, and allow him to travel abroad to obtain treatment for his injuries;
- d) urge the Kyrgyz Republic to create an independent commission of inquiry to investigate the circumstances of the detention and torture of Mr. Askarov, with the power to initiate a criminal prosecution of those found to be the material and intellectual authors.
- e) urge the Kyrgyz Republic to pay just compensation for the torture and illegal detention of Azimjan Askarov and provide for full rehabilitation.
- f) urge the Kyrgyz Republic to introduce safeguards to prevent similar violations from happening in the future, including to ensure registration of all detainees from the moment of detention; the proper monitoring of the detention facilities and provision of an independent and secure complaints mechanism for allegations of torture; to ensure prompt transfer of suspects from police detention to independent detention facilities; to ensure prompt, regular and unimpeded private visits by family members and lawyers to those in detention; to ensure independent conduct of medical examinations and review where requested; and the creation of an independent mechanism entrusted to investigate torture allegations in full accord with international norms and domestic legislation;
- g) urge the Kyrgyz Republic to fulfill its duties to protect human rights defenders and prevent similar violations of their rights from happening in the future.
- h) urge the Kyrgyz Republic to create an independent commission of inquiry to review all convictions related to the violence in southern Kyrgyzstan in June 2010 with full respect for fair trial guarantees, and to investigate all torture allegations, including allegations not filed as formal complaints but raised orally, including during court proceedings, and complaints made at later stages of proceedings or after the trial proceedings once the complainants were no longer in police custody.

12 November 2012



James A. Goldston

Rupert Skilbeck

Masha Lisitsyna

Open Society Justice Initiative

## **IX. LIST OF SUPPORTING DOCUMENTS**

- Exhibit 1 Map of Jalal-Abad Oblast
- Exhibit 2 Statement of Azimjan Askarov, 5 July 2012
- Exhibit 3 Diary of Mr. Askarov
- Exhibit 4 Statement to Supreme Court by Mr. Askarov, 28 December 2010
- Exhibit 5 Open Society Justice Initiative interview with Azimjan Askarov, 5 July 2012

### **Statements**

- Exhibit 6 Statement of Nurbek Toktakunov, 12 July 2012
- Exhibit 7 Statement of Valentina Gritsenko, 3 July 2012
- Exhibit 8 Statement of Baktykhan Japarova, 30 June 2012
- Exhibit 9 Statement of Tatiana Tomina, 6 September 2012
- Exhibit 10 Statement of Aziza Abdirasulova, 17 September 2012

### **Procedural Documents: Investigation and Trial**

- Exhibit 11 Decision to initiate criminal proceedings, 13 June 2010
- Exhibit 12 Decision to compose investigation group, 14 June 2010
- Exhibit 13 Record of questioning as a witness, 15 June 2010
- Exhibit 14 Record of questioning as suspect, 16 June 2010
- Exhibit 15 Record of Confrontation with Mageev, 16 June 2010
- Exhibit 16 Record of Confrontation with Dosov; 16 June 2010
- Exhibit 17 Record of Confrontation with Umarahunov, 16 June 2010
- Exhibit 18 Record of Confrontation with Abdazov, 16 June 2010
- Exhibit 19 Record of Confrontation with Eraliev, 16 June 2010
- Exhibit 20 Record of Confrontation with Tairov, 16 June 2010
- Exhibit 21 Record of Confrontation with Abdugulov, 16 June 2010
- Exhibit 22 Record of detention as suspect, 16 June 2010
- Exhibit 23 Decision on Prosecution as Defendant, 17 June 2010
- Exhibit 24 (a) Press release of the Jalal-Abad oblast prosecutor's office, 18 June 2010  
(b) Record of search and seizure, 17 June 2010

### **Authorization of Detention**

- Exhibit 25 Bazar-Korgon district court decision on detention, 17 June 2010
- Exhibit 26 Appeal Complaint of Mr. Abylakimov on decision from 17 June 2010
- Exhibit 27 Decision of Jalal-Abad oblast court on detention appeal, 24 June 2010

### **Preparation for Trial and Complaints of Interference and Torture**

- Exhibit 28 (a) Power of Attorney to VOF  
(b) Note on torture
- Exhibit 29 Nurbek Toktakunov's petition to the Prosecutor of Bazar Korgon region, 22 June 2010
- Exhibit 30 Record of additional questioning as suspect, 23 June 2010.
- Exhibit 31 Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 23 June 2010
- Exhibit 32 Addition to Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast, 25 June 2010
- Exhibit 33 Nurbek Toktakunov's petition to the Prosecutor of Jalal-Abad oblast to relocate Askarov, 25 June 2010
- Exhibit 34 Decision of Jalal-Abad prosecutor refusing to initiate criminal proceedings, 28 June 2010
- Exhibit 35 Letter from Jalal-Abad oblast Prosecutor's Office, 30 June 2010
- Exhibit 36 Nurbek Toktakunov's complaint to the Jalal-Abad city court, 14 July 2010
- Exhibit 37 Decision of Jalal-Abad city court, 26 July 2010
- Exhibit 38 Petition of H. Askarov and T. Askarova to "Voice of Freedom", 27 July 2010
- Exhibit 39 Nurbek Toktakunov's complaint to the Ministry of Internal Affairs, 4 August 2010
- Exhibit 40 Letter from Ministry of Interior, 16 August 2010
- Exhibit 41 Notification from Jalal-Abad oblast Prosecutor's Office, 11 August 2010
- Exhibit 42 Nurbek Toktakunov's petition to Jalal-Abad oblast court, 23 August 2010
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- Exhibit 43 Petition to have private meeting with client, 6 September 2010
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- Exhibit 45 Verdict of Bazar-Korgon district court, 15 September 2010
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- Exhibit 46 Addition to appeal by Nurbek Toktakunov on the Bazar-Korgon district court verdict from 15 September 2010
- Exhibit 47 Petition to conduct medical examination, 11 November 2010
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- Exhibit 49 Collective letter from residents of Bazar-Korgon village to the Supreme Court, January 2011
- Exhibit 50 Supervisory complaint by Mr. Abylakimov, 22 November 2010
- Exhibit 51 Supervisory complaint by Mr. Toktakunov, January 2011
- Exhibit 52 Complaint of the relatives of the deceased police officer to the Supreme Court, 3 December 2010

Exhibit 53 Petition on insufficient number of and conditions in detention facilities, 27 January 2011

Exhibit 54 Bundle of 13 notarised witness statements, 3-4 February 2011

Exhibit 55 Two witness statements of Abdirasulova [REDACTED], January 2011

Exhibit 56 Verdict of the Supreme Court, 20 December 2011

#### **Civil Claim against Mr. Askarov**

Exhibit 57 Decision of Bazar-Korgon District Court (civil claim), 2 December 2011

Exhibit 58 Open Society Justice Initiative correspondence with Evgeniya Krapivina, 3 March 2012

#### **Other Documents**

Exhibit 59 Press-release of the Prosecutor General, 20 January 2011

Exhibit 60 Nurbek Toktakunov's appeal to the General Prosecutor's Office, 20 December 2010

Exhibit 61 Petition to General Prosecutor's Office, 14 January 2011

Exhibit 62 Letter from General Prosecutor's Office, 20 January 2011

Exhibit 63 Nurbek Toktakunov's complaint to the Pervomaiski district court in Bishkek, 15 March 2011

Exhibit 64 Decision of Pervomaiski district court in Bishkek, 30 March 2011

Exhibit 65 Letter to General Prosecutor's Office, 15 April 2011

Exhibit 66 Letter to the Chairman of the State Service on Punishment Execution Bayzakov S. K., 20 February 2012

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Exhibit 67 Decision to conduct medical examination, 17 June 2010

Exhibit 68 Report of medical examination conducted on 17 June 2010, 24 June 2010

Exhibit 69 Medical Report by Dr. E.A. Khalitova in Correctional Colony No. 47, Bishkek, 12 October 2011

Exhibit 70 Askarov medical case history #745/0275

Exhibit 71 Askarov patient medical record card

Exhibit 72 Affidavit of Dr. Sondra S. Crosby, 23 December 2011

Exhibit 73 Second affidavit of Dr. Sondra S. Crosby with Annexes B and C, 13 April 2012

Exhibit 74 Physicians for Human Rights Statement on Askarov Forensic Report

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