

Akunov v. The Kyrgyz Republic

*Communication to the
United Nations Human Rights Committee*

October 2011



OPEN SOCIETY
JUSTICE INITIATIVE

Communication to the United Nations Human Rights Committee

In the case of

Bektemir AKUNOV

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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Date and place of birth: [REDACTED], [REDACTED], Naryn Oblast, the Kyrgyz Republic
Present address: [REDACTED], Bishkek, the Kyrgyz Republic

II. THE VICTIM (DECEASED)

Name: Akunov
First name: Bektemir
Nationality: Kyrgyz Republic
Profession: Civic activist
Date and place of birth: [REDACTED]; [REDACTED], Naryn Oblast, the Kyrgyz Republic
Relationship to the author: Father

III. LEGAL REPRESENTATIVES OF THE AUTHOR

1. This claim is submitted by the Open Society Justice Initiative and Kanat Djailoev, who are appointed as legal representatives of the Author, who is the son of Bektemir Akunov.¹ A letter of authority is attached to this communication.
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IV. 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.

¹ This communication was prepared with assistance from the clinical program at the University of Essex Human Rights Centre.

V. SUMMARY OF THE CLAIM

Summary of the facts

4. Bektemir Akunov was a civic activist in the Kyrgyz Republic. After participating in a series of hunger strikes and protests in Bishkek in early April 2007, he returned to the town of Naryn on 14 April 2007 and requested a meeting with the Mayor. A few hours later, Mr. Akunov was arrested by the police and taken to the Department of Internal Affairs police station. Later that evening, residents who lived nearby saw police officers beating Mr. Akunov outside the police station, even after he was handcuffed. Mr. Akunov cried out that the police were killing him, and that they would not let him leave the station alive. He also asked that his sister, who lived in the building nearby, be informed of his detention. The police, who claim that Mr. Akunov was trying to escape, dragged him back into the detention facility. Other detainees who had been arrested that night were released. However, the police changed the basis for Mr. Akunov's detention, which should have been limited to three hours, and held him overnight. At no point was his family or any other representative informed of his detention. Local residents heard Mr. Akunov continue to cry out until five o'clock the next morning.
5. The next day, at around midday, Mr. Akunov was found dead. The police claim that Mr. Akunov hung himself in his cell, for reasons unknown. The examination of his body revealed numerous abrasions and bruises to his torso (especially around the kidneys), shoulders, elbows, knees, fingers and toes; as well as hemorrhaging to his brain, chest cavity and lungs. The police conducted a superficial investigation: they failed to secure the scene of Mr. Akunov's death, ignored a message written in blood on the wall of his cell, discounted the testimony of the witnesses who saw the police beating Mr. Akunov, and failed to investigate the numerous irregularities in his detention. The investigation concluded that all of Mr. Akunov's injuries had been sustained when he attempted to escape from detention or by convulsions when he hung himself. No officers have been held responsible for beating Mr. Akunov, or for his death. The only charges brought were for negligence in failing to supervise Mr. Akunov and allowing him to hang himself: one officer was acquitted; and the other was given a suspended sentence. This response is wholly inadequate given the seriousness of the allegations.
6. The arbitrary arrest, torture and ultimate death of Mr. Akunov were part of the Kyrgyz authorities' violent repression of the demonstrations of April 2007, which were forcibly dispersed by the police, and their subsequent retaliation against those involved. Dozens of protesters were detained and interrogated by the security services, and several members of the opposition movement were charged with organizing mass disturbances. Although most of the charges were eventually dropped, four members of the United Front movement, which had organized the hunger strike and protests, were convicted on what appear to be politically motivated charges.

Violations of the ICCPR

7. The Kyrgyz Republic has violated the International Covenant on Civil and Political Rights ("ICCPR") in the following ways:
 - A. *Arbitrary Killing*. The Kyrgyz Republic is responsible for the death of Mr. Akunov, who was detained by the authorities in good health, was beaten by police officers, and was then found dead in their custody the next day. The State is presumed to be responsible for any death in custody, and has not provided any reliable evidence or explanation of how Mr. Akunov died. The Kyrgyz Republic is therefore responsible for a violation of Article 6(1) of the ICCPR.
 - B. *Torture*. The treatment inflicted upon Mr. Akunov by police officers while in their custody amounts to torture in violation of Article 7 of the ICCPR, or at a minimum to cruel and inhuman treatment. These injuries cannot be explained or excused by Mr. Akunov's alleged attempt to escape or as incidental to his supposed suicide.

- C. *Lack of Safeguards.* The Kyrgyz Republic failed to take measures to protect Mr. Akunov from torture and from the arbitrary deprivation of his life, in violation of Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3).
- D. *Failure to conduct an effective investigation.* The Kyrgyz Republic failed to conduct a prompt, impartial, thorough, and effective investigation in violation of Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3).
- E. *Failure to provide redress.* The Kyrgyz Republic failed to provide access to effective remedies for the torture and death of Mr. Akunov, including compensation and adequate reparation, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3).
- F. *Arbitrary Detention and Freedom of Expression.* The authorities detained Mr. Akunov, and subsequently tortured and killed him, in response to his civic and political activism and expression of views critical of the government. This detention was not for a legitimate purpose, and therefore arbitrary in violation of Article 9(1) of the ICCPR; and his mistreatment and death violated his freedom of expression under Article 19 of the ICCPR.

Summary of domestic remedies exhausted

- 8. Mr. Akunov's son, through the family's lawyer, has exhausted all available and effective domestic procedures in an attempt to remedy the violations set out above. He has filed four petitions with the Prosecutor seeking a proper investigation which addresses the irregularities in Mr. Akunov's detention, his beating and torture, and fully examines the reasons and cause of his death. He also initiated a series of forensic examinations. He finally challenged the closure of the investigation, taking his challenge to the Supreme Court of the Kyrgyz Republic. None of these efforts have been successful in obtaining a remedy or proper investigation into the torture and death of his father.

VI. FACTS OF THE CLAIM

Background: Bektemir Akunov

- 9. Mr. Bektemir Akunov was born in 1954, and lived in the Orto-Nura Village in the Naryn region of the Kyrgyz Republic. Mr. Akunov was married and the father of eight children. He was known in his community as a civic and political activist who frequently engaged in public discussions of local issues and often criticized government authorities.²
- 10. During the 2000 parliamentary elections in the Kyrgyz Republic, Mr. Akunov served as an election observer, representing Karganbek Samatov of the opposition "Ata-Meken" party. In 2005, Mr. Akunov again acted as a parliamentary observer on behalf of candidate of the opposition Communist Party, Ishenbai Kadyrbekov. For both the 2000 and 2005 elections, the regional Naryn offices for these candidates were based out of Mr. Akunov's house.³
- 11. From 5 April to 14 April 2007, Mr. Akunov participated in a series of protests organized by the United Front for the Worthy Future of Kyrgyzstan against the Kyrgyz Government and proposed constitutional reforms. From 6 to 11 April, Mr. Akunov was one of approximately 100 people that occupied a main square in front of the national parliament building in Bishkek, the capital of Kyrgyzstan. For one week, the protesters staged a hunger strike in the square, which was widely covered in the media, and called for the resignation of then-President Kurmanbek Bakiyev. During the hunger strike, Mr. Akunov raised several examples of abuse by the central government and

² Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, paras. 3-4.

³ Exhibit 24, *supra*, para. 31.

pointed to specific problems affecting his native region of Naryn, including mismanagement of tax revenues and the lack of benefits for young families.⁴

12. Following the hunger strike, Mr. Akunov and other participants continued their protests by engaging in antigovernment rallies in Bishkek from 11 April to 14 April 2007.⁵ During these rallies, Mr. Akunov marched at the front of the protesters, where he carried the national flag and was followed by approximately 100 people, to the seat of the Kyrgyz President.⁶ As discussed in more detail below, several members of the United Front were persecuted by the government following the demonstrations in April 2007 (see para. 89, below).

Detention, Torture, and Death of Mr. Akunov

Police Arrest of Mr. Akunov

13. On 14 April 2007 at approximately 18:00, after participating in the Bishkek demonstrations, Mr. Akunov returned to his native town of Naryn. Mr. Akunov wanted to discuss the possibility of organizing political protests in Naryn, so he decided to seek the help of local government officials.⁷ At approximately 19:00 that day, Mr. Akunov went to the Mayor's office in Naryn City Hall to ask the government "to inform the people in Naryn about the [political] events in Bishkek".⁸
14. According to the police, at 19:30 a staff member of at the Naryn Mayor's Office, Mr. Mambetaliyev, telephoned the police and claimed that an intoxicated man was acting in a rowdy manner.⁹ In response, the Deputy Chief of the Department of Internal Affairs, Sovet Kumanakunov, went to Naryn City Hall, spoke to Mr. Mambetaliyev and left. He was called back again at approximately 20:30, as Mr. Mambetaliyev claimed that Mr. Akunov had returned to the City Hall, had been smoking, and had sworn at the reception desk officer (Mr. Mambetov).¹⁰ It was also said that he had telephoned the Mayor of Naryn at his home.¹¹
15. While Deputy Chief Kumanakunov was at City Hall, he claims that the Mayor approached him and told him to "take steps within the bounds of law".¹² Deputy Chief Kumanakunov says he then began to search for Mr. Akunov on the streets of the city, by car, found him walking near the Naryn Drama Theatre, and arrested him.¹³ Mr. Akunov explained that he had just returned from Bishkek, where he was participating in a meeting.¹⁴

⁴ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, paras. 5-6.

⁵ Exhibit 47 – Radio Free Europe Radio Liberty, "Kyrgyzstan: Thousands Demand President's Resignation", 11 April 2007. Available at: <http://www.rferl.org/content/article/1075803.html>.

⁶ Exhibit 24, *supra*, paras. 7-8.

⁷ Exhibit 2 – Urmat Akunov, "Petition to the Acting Prosecutor of the City of Naryn, A. Dzhooshebekov," 16 July 2007 ("Complaint to Naryn City Prosecutor by Urmat Akunov, 16 July 2007").

⁸ Exhibit 24, *supra*, paras. 9-10.

⁹ Exhibit 1 – Naryn Prosecutor Office, "Resolution on several facts related to reducing criminal proceedings against a group of individuals," 14 July 2007 ("Resolution reducing criminal proceedings with respect to Akunov's death, 14 July 2007").

¹⁰ Exhibit 10 – Naryn City Prosecution Office, "Decision to terminate judicial prosecution with regard to the detention of B. Akunov at the Naryn City Department of Internal Affairs for violation of administrative rights," 15 February 2008 ("Decision terminating judicial prosecution regarding detention of B. Akunov, 15 February 2008").

¹¹ Exhibit 1, *supra*.

¹² Exhibit 10, *supra*.

¹³ *Ibid.*

¹⁴ *Ibid.*

16. At 22:00, the police officers brought Mr. Akunov to the Naryn City Department of Internal Affairs (“the police station”).¹⁵ The matter was assigned to Officer Niyazakunov, who called a toxicologist to perform an alcohol test.¹⁶
17. The police report made at the time of his detention contains a number of irregularities. The report states that Mr. Akunov had violated Article 366 of the Administrative Liability Code, which relates to intoxication in public.¹⁷ Under this provision, a person may only be detained for three hours, and shall then be released (Article 565 of the Code¹⁸). However, the detention record was subsequently altered without explanation, and the basis for his detention was changed to Article 364 which relates to disturbing public order and authorises detention for a longer period. In addition, the report did not contain the signature of the policeman who compiled it or of any witnesses, contrary to the standard procedures. Furthermore, part of the form, including the policeman’s surname and Mr. Akunov’s personal data, was filled out with one pen, whereas other elements, including the witnesses and grounds for detention, were written with a different pen.¹⁹
18. The police placed Mr. Akunov in an administrative detention cell. At that time, there were seven other people in the cell. All of them were staff members of the Naryn Forest Service who had been detained for being drunk. They report that as the police took Mr. Akunov to the cell he was commenting on politics.²⁰ Subsequently, at around 23:00, another individual who was drunk was detained by the police and was also put in the cell.²¹
19. Shortly after 23:00, the detainees were examined by a toxicologist, who subsequently compiled a report claiming that Mr. Akunov had a moderate amount of alcohol in his body.²² However, the report into the death of Mr. Akunov by an independent commission of human rights organisations confirmed “the fact that Akunov was sober”;²³ and Urmatbek Akunov, the deceased’s son, states that his father did not drink, and had not done so for seven years before his death.²⁴

Beating of Mr. Akunov Outside Naryn City Police Station

20. Sometime between 23:00 and 23:30 Mr. Akunov and four police officers were seen outside the police station, near an apartment building on 71 Lenin Street which is across the street from the station.²⁵
21. At least four of the building’s residents witnessed that “the police officers were beating Mr. Akunov near House 71”.²⁶ The witnesses report that even after he was handcuffed, the police

¹⁵ Exhibit 1 – Resolution reducing criminal proceedings with respect to Akunov’s death, 14 July 2007.

¹⁶ Exhibit 10 – Decision terminating judicial prosecution regarding detention of B. Akunov, 15 February 2008.

¹⁷ *Ibid.*, p. 3; Exhibit 8 – Naryn Appeal Court, “Order affirming the Order of 27 August on returning the criminal case to the Prosecutor’s Office,” 25 September 2007.

¹⁸ See Exhibit 5 – Urmat Akunov, “Motion to the Naryn City Court to stay the hearing of the criminal case and to return the case to the Prosecutor to rectify omissions in the investigation,” 24 August 2007 (“Motion to the Naryn City Court to return the criminal case to the Prosecutor’s Office, 24 August 2007”).

¹⁹ Exhibit 8, *supra*, para. 1.

²⁰ Exhibit 1, *supra*.

²¹ Exhibit 41 – Conclusion of the Independent Commission on the “Investigation of the causes of Bektemir Akunov’s death,” 20 April 2007, para. 7 (“Conclusion of the Investigation of Bektemir Akunov’s death, 20 April 2007”).

²² Exhibit 1, *supra*.

²³ Exhibit 41, *supra*.

²⁴ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 17.

²⁵ Exhibit 1, *supra*.

²⁶ *Ibid.*; see also Exhibit 20 – Bazargul Asanbekova, “Explanatory statement to Attorney Djailoiev,” 7 May 2007 (“Statement of Asanbekova”); Exhibit 22 – Askar Chorgobaevich Eshimkanov, “Explanatory statement to Attorney Djailoiev” (“Statement of Eshimkanov”).

officers kicked Mr. Akunov from behind.²⁷ One of the residents asked the police officers what they were doing, to which the officers replied that Mr. Akunov was a “bum”. The woman responded that even if he was a “bum,” he still had rights.²⁸

22. During this time, according to witnesses who saw these events, Mr. Akunov lay on the ground, repeatedly pleading for help. He screamed: “People, save me, they’re killing me, I’ll perish.” Two other witnesses testified that Mr. Akunov said: “Help, they are killing me. I am hungry, that is why I came. They won’t leave me alive.”²⁹ One witness recalls Mr. Akunov saying that the police were “bloodthirsty”.³⁰ Ultimately, Mr. Akunov asked that someone at least notify his sister of the arrest, as she resided in Apartment 17 of the building.³¹
23. These eyewitness reports were confirmed by an independent commission of human rights organisations, which investigated the death of Mr. Akunov and reported that “About 20 people witnessed the fact that: policemen beat Akunov; Akunov was handcuffed”. The commission’s report also confirmed that Akunov cried out “please help me, if they take me to the department [police station] they will kill me”.³²
24. Four police officers and staff of the detention facility were identified as involved in assaulting Mr. Akunov: Karybay uulu Aibek, Urmat Ryskulbekov, Kylychbek Uulu Bekzhan, and Urmat Asanliev. According to the police, Mr. Akunov had attempted to escape from detention, and had resisted their efforts to return him to the police station. The police stated that Mr. Akunov fell to the ground, and that when they tried to lift Mr. Akunov he maintained resistance.³³ According to one of the witnesses, the four police officers dragged Mr. Akunov, two by the arms and two by the legs, and handcuffed him.
25. Between 23:30 and 24:00, the authorities released the seven staff members of the Naryn Forest Service with whom Mr. Akunov was initially detained³⁴ and the other individual who had been arrested for drunkenness about one hour before.³⁵ As they departed from the police station, the Forest Service members noticed police officers carrying Mr. Akunov toward the police station, his entire body covered in dust from being dragged on the ground.³⁶
26. The police officers once again placed Mr. Akunov in the administrative detention cell, where he was the only detainee to be kept overnight. Nearby residents heard Mr. Akunov’s continuous pleas for help until 05:00 in the morning.³⁷

Death of Mr. Akunov in Detention

27. The next morning, 15 April, at approximately 08:30, Mr. Akunov was taken to see the chief of the police station, T. Nuraliev. The police claim that Mr. Akunov admitted that he had sworn at people at the City Hall the day before, and apologized for his behavior, explaining that he was drunk and

²⁷ Exhibit 23 – Kulumkul Kanaeva, “Explanatory statement to Attorney Djailoev” (“Statement of Kanaeva”).

²⁸ Exhibit 20 – Statement of Asanbekova, 7 May 2007.

²⁹ Exhibit 21 – Aynura Sarymsakova, “Explanatory statement to Attorney Djailoev” (“Statement of Sarymsakova”); Exhibit 22 – Statement of Eshimkanov.

³⁰ Exhibit 23, *supra*.

³¹ Exhibit 20, *supra*.

³² Exhibit 41 – Conclusion of the Investigation of Bektemir Akunov’s death, 20 April 2007, para. 6.

³³ Exhibit 1 – Resolution reducing criminal proceedings with respect to Akunov’s death, 14 July 2007.

³⁴ Exhibit 13 – Naryn City Court, “Order against Kozhombardiev and Zhunushbaev,” 4 April 2008.

³⁴ Exhibit 1, *supra*.

³⁵ Exhibit 41, *supra*.

³⁶ Exhibit 13, *supra*.

³⁷ Exhibit 2 – Complaint to Naryn City Prosecutor by Urmat Akunov, 16 July 2007.

had gone there to find a friend.³⁸ The police continued to hold Mr. Akunov in the police station, stating that they planned to submit the case to the court, but could not do so as it was a public holiday.³⁹

28. At no point did the police notify any family member that Mr. Akunov had been detained, as required by Article 316(2) of the Criminal Code,⁴⁰ despite the fact that he had explicitly asked that his sister be informed and had given her address. Chief of Police Nuraliev later explained that Mr. Akunov would have been released if a family member had requested it and taken responsibility for him.⁴¹ Mr. Akunov also was not provided with any medical attention, despite the fact that the police admit that they used force when returning him to the police station.
29. Two guards were on duty later that morning: Officer Kozhombardiev was the operational duty officer in charge, assisted by a temporary detention facility guard, Mr. Zhunushbaev. At approximately 11:50, Zhunushbaev states that he left the detention facility to escort a visitor; and that when he returned five minutes later, Officer Kozhombardiev informed him that Akunov had hanged himself.⁴² Zhunushbaev testified that he ran to the cell and saw Mr. Akunov convulsing.⁴³ He claimed that Mr. Akunov's long-sleeved shirt had been tied to the iron bar of his cell at a height of 2.3 meters, and Mr. Akunov hung from it by the neck. Zhunushbaev claimed that he helped lift Mr. Akunov and remove his shirt, after which he and several others attempted artificial respiration, but could not resuscitate Mr. Akunov.⁴⁴ The evidence is inconsistent as to whether the officers moved Mr. Akunov, whose body was bloodied, from his cell into the office of the duty officer,⁴⁵ or whether they left him in the cell.⁴⁶
30. At approximately 12:00 that afternoon (i.e. on 15 April), ambulance officers received a phone call from the police station stating that a man had hanged himself. The physician on duty at the time, Dr. Kasymalieva, testified that when he arrived at the station he saw "a man lying in the cell next to the office of the officer on duty". Dr. Kasymalieva stated that Mr. Akunov was "undressed from the waist up, in trousers but no socks, with a shirt under his head."⁴⁷ He checked the body and found no pulse, reporting that the body was neither cold nor warm. According to Dr. Kasymalieva, there was no odour of alcohol emanating from Mr. Akunov's mouth. He confirmed Mr. Akunov's death, filled out several documents, and left the detention facility. Mr. Akunov's body was later taken to the Naryn Hospital.⁴⁸

Medical Evidence

31. Examination of the body of Mr. Akunov showed that he had numerous injuries suggesting violence had been inflicted upon him which called out for further investigation, including bleeding in his brain caused by the impact of a hard object and internal bleeding in his chest.

Initial Autopsy

³⁸ Exhibit 10 – Decision terminating judicial prosecution regarding detention of B. Akunov, 15 February 2008.

³⁹ *Ibid.*

⁴⁰ See Exhibit 5 – Motion to the Naryn City Court to return the criminal case to the Prosecutor's Office, 24 August 2007.

⁴¹ Exhibit 11 – Kanat Dzhaiboyev, Urmat Akunov's lawyer, "Complaint against the Naryn City Prosecutorial Investigator's decision not to prosecute the criminal case," 25 February 2008.

⁴² Exhibit 14 – Naryn Region Court, "Order affirming the Naryn City Court ruling," 7 May 2008.

⁴³ *Ibid.*

⁴⁴ Exhibit 13 – Naryn City Court, "Order against Kozhombardiev and Zhunushbaev," 4 April 2008.

⁴⁵ *Ibid.*

⁴⁶ Exhibit 14, *supra*.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

32. Later that day, 15 April 2007, a government Forensic Medicine Evidence Board conducted an examination of Mr. Akunov's body, assessing his injuries and circumstances of death.⁴⁹ The resulting report determined that Mr. Akunov's death resulted from compression of the neck by a noose in conjunction with an atypical asphyxia (hanging). It identified "an atypical strangulation groove, faint, of dark-red color, width around 1.4 cm". This strangulation mark was "[o]n the back surface of the upper third part ... leading from back to front, oblique, ends on the left jaw and has a 10 cm break on the side surface of the upper third of the right side of the neck."⁵⁰
33. The autopsy revealed hemorrhaging and moderate swelling in the brain, which it concluded was caused by the impact of a hard object, and hemorrhaging in the chest cavity and the lungs. The report also identified a number of external injuries. These included multiple abrasions and hematomas to his fingers, elbows, knees and toes; bruises on the forearm, shoulder; abrasions to his head; as well as 18 linear abrasions around the kidneys and on the back of his ribcage. It also noted damage to his wrist (radiocarpal joint) and discolouration of his scrotum. A chemical analysis of Mr. Akunov's blood and urine tests included in the report indicated no traces of ethyl alcohol.⁵¹

Independent Examination

34. On 17 April 2007, a Deputy of the Kyrgyz Parliament, Karganbek Samakov, travelled to Naryn and participated in an independent anatomic examination of Mr. Akunov's body. After examining Mr. Akunov's body, Deputy Samakov declared: "I have no words, I am in shock. It was terrible. The dead body was covered with wounds. Akunov was severely beaten up."⁵²

Second Forensic Medical Examination

35. On 26 May 2007, the Akunov family's lawyer made four requests for a series of additional forensic examinations. The first request sought a review of Mr. Akunov's 15 April 2007 autopsy, arguing that the Forensic Medical Evidence Board's previous assessment of Mr. Akunov's body had been inadequate.⁵³ It noted discrepancies between Mr. Akunov's appearance at the time of death, when no strangulation groove was observed, and the finding of a strangulation groove in the autopsy; the incompatibility of the reported strangulation groove with the claim that Mr. Akunov hung himself with his shirt; and the absence of explanations for other injuries on his body, in particular indications of manual strangulation on the nape of the neck and chin. The request also pointed out that the 15 April 2007 report did not address the mental state of the victim and asked for information to be sent from mental health authorities. The petition called for a thorough forensic pathological examination to address ten questions, and moved to appoint specific independent experts from the capital, Bishkek.⁵⁴
36. In response, the Forensic Medicine Evidence Board conducted a second forensic examination.⁵⁵ Only one of the three experts requested by the Akunov family was appointed to the five-member

⁴⁹ The Forensic Medicine Evidence Board is a state body within the Ministry of Health that conducts forensic medical examination upon request of court, investigator or prosecutor who is in charge of investigation of crime (a defence lawyer cannot request the official examination directly). It is a *de facto* monopolist body that provides forensic medical examination. The experts usually work in public hospitals or morgues.

⁵⁰ Exhibit 25 – Forensic Medicine Expert Board, "Report No. 11 of the forensic assessment of Bektemir Akunov," 15 April 2007.

⁵¹ *Ibid.*

⁵² Exhibit 39 – Kyrgyz Committee for Human Rights, "Circumstances of death of the participant of political hunger-strike Bektemir Akunov," 17 April 2007. See also, Exhibit 40 – 24.kg News Agency, "Recently died hunger-striker severely beaten up", 17 April 2007. Available at: <http://eng.24.kg/community/2007/04/17/1851.html>.

⁵³ Exhibit 26 – Application by Attorney Kanat Dzhaloyev, "Petition No. 1, to conduct a collegial forensic pathological examination of Akunov's body," 26 May 2007.

⁵⁴ *Ibid.*

⁵⁵ Exhibit 13 – Naryn City Court, "Order against Kozhombardiev and Zhunushbaev," 4 April 2008.

board which conducted the review.⁵⁶ On 5 July 2007, in Report No. 112, the board determined that Mr. Akunov died because of suffocation due to mechanical asphyxiation.⁵⁷ The report concluded that the numerous bruises and cuts on Akunov's body were not related to the cause of death, and had most likely been caused by convulsions during the hanging.⁵⁸ This conclusion was reached even though Mr. Akunov's body was suspended from a smooth iron bar in a bare detention cell.⁵⁹ The report did, however, confirm that there were "rather significant pockets of fresh hemorrhage" in Mr. Akunov's brain.⁶⁰

Additional Scientific Examinations

37. In addition to the first petition requesting a review of the forensic medical evidence, on 26 May 2007 the Akunov family's lawyer requested two other scientific examinations, of, respectively, Mr. Akunov's clothes and his handwriting, and an investigative experiment into his death.

Examination of Handwritten Statement

38. The second petition submitted that the explanatory statement which Mr. Akunov purportedly wrote on 15 April 2007, admitting to consuming 100ml of vodka the night before and to swearing at the Mayor's office, was only written in part by Mr. Akunov as part of the text is clearly in different handwriting. The petition also noted the irregularity of a police officer writing the introductory portions of the statement, given that Mr. Akunov was competent to do so.⁶¹ The family's lawyer therefore called for a forensic handwriting examination of the written text and of Mr. Akunov's signature.
39. In June 2007, the State Center of Forensic Examination of the Kyrgyz Ministry of Justice concluded that the explanatory statement and signature were "executed by Bektemir Akunov himself in an unusual state, which could have been a state of agitation or stress".⁶²

Scientific Examination of Clothing

40. The third petition requested a scientific examination of Mr. Akunov's clothing to determine the presence of blood stains, tears, defects, or any other evidence indicating dragging or physical conditions that could provide information about the circumstances of Mr. Akunov's death in detention.⁶³
41. In response, the State Center of Forensic Examination examined Mr. Akunov's clothes, socks and shoes, which were sent from the Prosecutor's Office. Their report indicated damage on the left back part of Akunov's trousers and concluded that such defect occurred "as a result of friction due to ... tight contact of the damaged [fragments] of fabric... with a hard, coarse surface."⁶⁴ The examination also concluded that the "areas of pant fabric around knees and on the back have

⁵⁶ Zh. T. Turgunbaev.

⁵⁷ Exhibit 27 – Bureau of Forensic-Medical Examination, "Conclusion No. 112 (examination of the criminal case)", 5 July 2007.

⁵⁸ *Ibid.*

⁵⁹ Exhibit 41 – Conclusion of the Investigation of Bektemir Akunov's death, 20 April 2007, para. 8; Exhibit 7 – Urmat Akunov, "Objection to the special submission of the prosecutor".

⁶⁰ Exhibit 27, *supra*.

⁶¹ Exhibit 28 – Attorney Kanat Djailoev, "Petition No. 2, to conduct a forensic handwriting examination," 25 May 2007.

⁶² Exhibit 29 – State Center of Forensic Examination of the Ministry of Justice, "Forensic pathologist report No. 5801/01," 12 June 2007.

⁶³ Exhibit 30 – Attorney Kanat Djailoev, "Petition No. 3, to conduct forensic examination of materials," 26 May 2007.

⁶⁴ Exhibit 32 – State Center of Forensic Examination of the Ministry of Justice, "Forensic expert opinion No. 5797/03," 11 June 2007.

buildups in the form of particles of soil...as well as signs of superficial damage to threads in stitches and in the upper sections of stitches” also as the result of tight contact of the pant fabric with a hard coarse surface due to “friction or dragging” along the ground. Finally, Mr. Akunov’s shoes had been damaged due to the tight contact of its upper parts with a coarse surface, likely the ground.⁶⁵

Re-enactment of Mr. Akunov’s Death

42. The fourth petition asked the Public Prosecutor’s Office to conduct an investigative experiment to re-enact the self-hanging of Mr. Akunov in the cell of the Naryn Police Department, and recreate the conditions in which Akunov was discovered. The petition noted that this type of experiment would help determine whether Mr. Akunov was in fact capable of hanging himself, considering variables such as Mr. Akunov’s body weight and the layout of his detention cell.⁶⁶
43. The re-enactment took place on 7 June 2007. The police officers showed how the shirt was allegedly twisted, fitted around Mr. Akunov’s neck and tied to the window bars. The family’s lawyer questioned how the shirt could have made the marks on Mr. Akunov’s neck. Officer Kozhombardiev (who claims to have found Mr. Akunov after he hung himself) said he didn’t know.⁶⁷ Although Mr. Akunov’s shirt was undamaged,⁶⁸ when the officers attempted to re-enact the hanging with his shirt, it tore. They subsequently managed to re-enact the hanging with a different shirt, and hung a weight equivalent to Mr. Akunov’s body for one minute and thirty seconds.⁶⁹

The Investigation into Mr. Akunov’s Death

First petition to initiate criminal proceedings

44. On 15 April 2007, criminal case No. 160-07-96 was initiated against two of the on-duty police officers, B. Kozhombardiev and B. Zhunushbaev, for negligence in their duties, in violation of Article 316(2) of the Criminal Code.⁷⁰
45. On 18 May 2007, Mr. Akunov’s son – Urmatbek Akunov – submitted a complaint to the Prosecutor’s Office requesting the initiation of criminal proceedings against the four police officers who were seen beating Mr. Akunov outside the police station – B. Ryskulbekov Urmat, Kylychbek uulu Bekzhan, Asanaliev Urmat and Karybay uulu Aibek – for abusing their authority and committing torture against his father on 14 April 2007
46. On 14 July 2007, the Naryn City Prosecution Office issued a decision refusing to open criminal proceedings against the four police officers. The prosecution investigator determined that there was no evidence that the injuries sustained by Mr. Akunov were caused by the police officers. This determination was based on (i) alleged discrepancies in the eyewitness testimony of residents living close to the police station, and (ii) the conclusion of Forensic Expert Report No. 112 which stated that Mr. Akunov may have incurred his injuries as a result of hanging himself and convulsing.⁷¹
47. On 16 July 2007, the Naryn Prosecution Office concluded its criminal investigation against Officer Kozhombardiev and Officer Zhunushbaev, charging them with the crime of negligence under

⁶⁵ *Ibid.*; see. Exhibit 31 – State Center of Forensic Examination of the Ministry of Justice, “Forensic expert opinion No. 5836/10”, 8 June 2007.

⁶⁶ Exhibit 33 – Attorney Kanat Djailoev, “Petition No. 4, to conduct an investigative experiment”, 26 May 2007.

⁶⁷ Exhibit 34 – Record of the reconstruction of events and an experiment in criminal case 160-07-96, 7 June 2007.

⁶⁸ Exhibit 27 – Bureau of Forensic-Medical Examination, “Conclusion No. 112 (examination of the criminal case)”, 5 July 2007, citing “Expert Conclusion No. 8”.

⁶⁹ Exhibit 34, *supra*.

⁷⁰ Exhibit 1 – Resolution reducing criminal proceedings with respect to Akunov’s death, 14 July 2007.

⁷¹ Exhibit 1, *supra*.

Article 316(2) of the Criminal Code of Kyrgyz Republic, based on their failure to properly monitor Mr. Akunov in detention.⁷²

Second petition to initiate criminal proceedings

48. On 16 July 2007, Urmatbek Akunov filed a second petition to the Prosecutor's Office, again requesting the initiation of a criminal case against the four police officers involved in the arrest of his father. He alleged that the four policemen had tortured his father to obtain a confession, exceeding their authority in violation of Articles 301 and 305 of the Kyrgyz Criminal Code. He also requested the initiation of a case against Deputy Chief Kumanakunov and the duty officer who initially processed Mr. Akunov's detention, as well as the Deputy Chief of the Oblast Department of Internal Affairs, on the same grounds. The petition argued that the killing of Akunov had inflicted substantial pain, suffering, and significant damages on the family.⁷³
49. Urmatbek Akunov supported his allegations with the forensic reports of the injuries inflicted on his father, and numerous witness accounts from those living in the vicinity of the police station who saw the violent mistreatment of Mr. Akunov on the street and heard Mr. Akunov crying for help until 05:00 on 15 April (see paras. 21 to 26, above).
50. On 20 July 2007, the Deputy Public Prosecutor of the Naryn Region replied to the petition, stating that the allegations had been investigated on 16 April 2007, and that a criminal case was in progress against Officers Kozhombardiev and Zhunushbaev. The reply did not address the allegations in substance, but simply claimed that there were no grounds to initiate a separate criminal case against other officers of the Naryn City police station.⁷⁴

Judicial Application Requesting Further Investigation

51. On 24 August 2007, Urmatbek Akunov submitted an application to the Naryn City Court requesting the return of the criminal case to the Prosecutor's Office to address deficiencies in its investigation and conduct a further inquiry. The application requested an investigation and criminal case against the policemen who had allegedly beaten Mr. Akunov, as well as against Deputy Chief Kumanakunov and Chief of Police Nuraliyev.
52. On 27 August, 2007, the Naryn City Court upheld the application and returned the criminal case against Officers Kozhombardiev and Zhunushbaev to the Prosecutor's Office to address deficiencies in its investigation of Mr. Akunov's death.⁷⁵
53. In response, the Naryn City Prosecutor filed an *ex parte* submission to the Naryn Oblast Court demanding that the court void the City Court's ruling.⁷⁶ The Prosecutor claimed that Mr. Akunov hanged himself for "unknown reasons",⁷⁷ and that it was "impossible" to collect all the evidence and to make a determination on Urmatbek Akunov's application.⁷⁸
54. On 25 September, 2007, the Naryn Oblast Court reviewed the Prosecutor's application and the objections of Urmatbek Akunov's lawyer. The Court noted that the Mr. Akunov's bodily injuries were not properly examined, and that it appeared that "B. Akunov, who [had been] participating in

⁷² Exhibit 3 – Naryn City Prosecution Office, "Determination regarding the conclusion of investigation of the death of Bektimir Akunov," 16 July 2007.

⁷³ Exhibit 2 – Complaint to Naryn City Prosecutor by Urmat Akunov, 16 July 2007.

⁷⁴ Exhibit 4 – Naryn Region Public Prosecutor's Office, "Response to Urmat Akunov's petition of a criminal case against the Naryn City Department of Internal Affairs," 20 July 2007.

⁷⁵ Exhibit 6 – Decision of Naryn City Court, 27 August 2007.

⁷⁶ Exhibit 8 – Naryn Appeal Court, "Order affirming the Order of 27 August on returning the criminal case to the Prosecutor's Office," 25 September 2007.

⁷⁷ Exhibit 7 – Urmat Akunov, "Objection to the special submission of the prosecutor".

⁷⁸ Exhibit 8, *supra*.

a political hunger strike, was beaten by employees of the Naryn City Department of Internal Affairs, who drove him to suicide.” The Court reiterated that the legality of Mr. Akunov’s detention still needed to be clarified, and that the legal responsibilities of officers on duty at the Department should be determined. Finally, the Court called the Prosecution’s attention to the statements of some witnesses that were not examined, and to the absurdity of other witness testimony to the effect that Akunov was “dragging himself along the ground” when he was brought back to detention. The Oblast Court therefore affirmed the City Court’s order to return the criminal case to the Prosecutor’s Office for further investigation.⁷⁹

55. On 20 December 2007, the Supreme Court of the Kyrgyz Republic also examined the case and affirmed the orders of the Naryn City and Naryn Oblast Courts.⁸⁰
56. However, on 15 February 2008, the Naryn City Prosecutor’s Office again concluded that no crimes had been committed by Chief Nuraliev, Deputy Chief Kumanakunov, or Officers Niyazakunov and Asanliev. The investigator noted that Mr. Akunov’s detention had been based on a complaint by Mr. Mambetov, and thus Officer Nuraliev’s decision to send the case to the court complied with article 364 of the Code on Administrative Liabilities. On this basis, the prosecutor’s office refused to indict them.⁸¹

Third petition to open criminal proceedings

57. On 25 February 2008, Urmatbek Akunov submitted an application to the Naryn City Prosecutor, asking that he reverse the decision not to indict the policemen. The application also requested a transfer of the investigation to the Prosecutor-General’s Office.⁸²
58. The application pointed out a series of irregularities in the basis for Mr. Akunov’s detention. The original complaint against Mr. Akunov by one of the staff of the mayor’s office, Mr. Mambetov, was written under coercion from Deputy Chief Kumanakunov; and the second staff member, Mr. Mambetaliev, had provided false information by testifying that Mr. Taisarek Otorov could corroborate his description of Mr. Akunov’s “drunken” behavior, despite the fact that Mr. Otorov was not present at the Naryn City Mayor’s Office, or even in the City of Naryn, at the relevant time. As the application also noted, Mr. Mambetaliev’s assertion of Mr. Akunov’s “drunken” behavior also contradicts his colleague Mr. Mambetov’s testimony that while Mr. Akunov was agitated, “there was no intoxication.”⁸³
59. The application also pointed out a number of other concerns with the record and treatment of Mr. Akunov in detention. It reiterated that the detention officer had falsified the detention record by changing the nature of the alleged misconduct from a violation of Article 366 to a violation of Article 364. It also pointed out that despite being in charge of the department, Officer Kumanakunov had left the police station unsupervised from approximately 22:00 on 14 April until 08:00 the following morning, allowing Mr. Akunov to be ill-treated during the night. As a result, the statement which Mr. Akunov purportedly made the next morning, admitting to drinking vodka, had been obtained under duress. Furthermore, the evidence of multiple abrasions and witness testimony regarding the police officers’ violent treatment of Mr. Akunov had not been examined in the prosecutorial investigation and thus did not receive judicial review.⁸⁴

⁷⁹ *Ibid.*

⁸⁰ Exhibit 9 – Resolution of the Supreme Court, 20 December 2007.

⁸¹ Exhibit 10 – Decision terminating judicial prosecution regarding detention of B. Akunov, 15 February 2008.

⁸² Exhibit 11 – Kanat Djailoev, Urmat Akunov’s lawyer, “Complaint against the Naryn City Prosecutorial Investigator’s decision not to prosecute the criminal case,” 25 February 2008.

⁸³ *Ibid.*

⁸⁴ Exhibit 11 – Kanat Djailoev, Urmat Akunov’s lawyer, “Complaint against the Naryn City Prosecutorial Investigator’s decision not to prosecute the criminal case,” 25 February 2008.

60. On 25 February 2008, the same day that the application was made, the Prosecutor denied the application. The Prosecutor stated that the investigation had revealed that Mr. Akunov was not beaten by the police but had sustained his injuries as he escaped from the police station and while he was lying on the ground resisting arrest or while convulsing after he hung himself.⁸⁵ The Prosecutor also concluded that the police did not falsify the detention record, but that the change from Article 366 to 364 in the report was the result of a typographical error.⁸⁶

Prosecution of two police officers

61. On 4 April 2008, the Naryn City Court heard the case against two police officers who were on duty on the day of Mr. Akunov's death, Kozhombardiev and Zhunushbaev. The court found Kozhombardiev guilty of negligence under Article 316(2) of the Criminal Code, and sentenced him to conditional imprisonment for three years. However, it suspended this sentence with a probation period of one year, pursuant to Article 63.⁸⁷ The court acquitted Zhunushbaev.⁸⁸ The acquittal of Zhunushbaev was subsequently upheld by the Naryn Oblast Court on 7 May 2008;⁸⁹ and again by the Supreme Court on 2 September 2008.⁹⁰

Civil claim for damages

62. The family of Mr. Akunov obtained a limited award of damages, but not through the criminal process necessary in such a case. On 25 June 2008, Urmatbek Akunov filed a civil claim against the Kyrgyz Ministry of Internal Affairs, along with the Ministry of Finance, for financial damages and compensation for pain and suffering.⁹¹ The claim requested payment of financial damages of 490,507 soms (about \$11,000 USD), benefits for the continued support of four surviving children (as Mr. Akunov was the sole provider for his family), and substantial compensation for pain and suffering. He also requested an official published apology for the death of his father.⁹²
63. The Court initially rejected this application because of procedural deficiencies.⁹³ Urmatbek Akunov subsequently refiled his claim, and on 2 December 2008 the court awarded him the bulk of the financial damages that he had requested (465,139 soms), along with a small sum for moral damages (100,000 soms; approx. \$2,200 USD), to be paid by the Ministry of Finance as the agency that administers the budget of the Ministry of Internal Affairs.⁹⁴ These moral damages were based solely on the damage caused by the negligence of the officials which was considered to have allowed his father to commit suicide. Following an appeal by the Ministry of Internal Affairs, on 19 March 2009 a judicial board overturned the decision and reduced the award of financial damages from 465,139 to 27,967 soms (approx. \$600 USD).⁹⁵
64. In 2009, Urmatbek Akunov wrote to President Bakiev, indicating that his family was left without their father and lost their primary source of financial support. A discretionary payment was made

⁸⁵ *Ibid.*

⁸⁶ Exhibit 12 – Prosecutor of Naryn City, M. Akmatyaliyev, “Order denying a motion from K. Dzhalilov, attorney for victim U. Akmatov to reverse Naryn City Public Prosecution Officer decision to terminate prosecution,” 25 February 2008 (“Order denying a motion to reverse the decision to terminate prosecution, 25 February 2008”).

⁸⁷ Exhibit 13 – Naryn City Court, “Order against Kozhombardiev and Zhunushbaev,” 4 April 2008.

⁸⁸ *Ibid.*

⁸⁹ Exhibit 14 – Naryn Region Court, “Order affirming the Naryn City Court,” 7 May 2008.

⁹⁰ Exhibit 15 – Decision of the Supreme Court, 2 September 2008.

⁹¹ Exhibit 35 – Urmatbek Akunov, “Claim for financial damages and compensation for pain and suffering caused by the crime”, filed before the Pervomaisky District Court in Bishkek, 24 June 2008.

⁹² *Ibid.*

⁹³ Exhibit 36 – Pervomaisky Court of the City of Bishkek, “Order on U. Akunov’s claim of compensation,” 27 June 2008.

⁹⁴ Exhibit 37 – Decision of the Pervomaisky District Court of the City of Bishkek, 2 December 2008.

⁹⁵ Exhibit 38 – Decision of the Judicial Board on Civil Cases, City of Bishkek, 19 March 2009.

from the presidential fund of 50,000 soms (approx. \$1,100 USD) for the university studies of Mr. Bektemir Akunov's daughter (sent directly to the university) and 15,000 soms (approx. \$300 USD) for his younger son.⁹⁶

Fourth petition to renew investigation

65. In June 2010, following a change in government, Urmatbek Akunov filed a fourth petition with the Prosecutor General's Office of the Kyrgyz Republic in an attempt to renew the criminal investigation, arguing that neither the investigations nor the courts considered all the facts and circumstances surrounding the death of Mr. Akunov.
66. On 10 June 2010, the Prosecutor General's Office ordered that the criminal investigation be recommenced due to newly discovered circumstances. The Prosecutor General ordered that the new criminal proceedings be monitored by the Prosecutor of Naryn Oblast,⁹⁷ who acknowledged this order on 18 June 2010.⁹⁸
67. On 17 July 2010 the prosecutor concluded his investigation and sent a report to the Supreme Court. This report did not change any findings from the prior investigations. In examining the alleged explanatory statement in which the police claim Mr. Akunov admitted to having drunk 100ml of vodka, the prosecutor recalls that the experts found that it was written in a state of great stress, but maintains that there are no grounds to consider that Mr. Akunov was under pressure when he wrote it. The prosecutor was unable to get further evidence from four local residents who had witnessed the police beating Mr. Akunov: the prosecutor claimed that two eyewitnesses refused to testify, one had died, and the fourth only gave vague testimony because so much time had passed. The prosecutor finally identified two issues requiring further investigation.⁹⁹
68. The Supreme Court recognized that various questions still had not been investigated, including the allegation that Mr. Akunov wrote the alleged explanatory statement under pressure, and specifying how and where Mr. Akunov received his injuries. Nevertheless, on 7 October 2010 the Supreme Court refused to continue the investigation on the grounds that the Prosecutor did not present any new facts in his report.¹⁰⁰

Findings of Kyrgyz Parliament, Human Rights Groups and the Media

69. A range of local and international human rights organisations have expressed concern over the beating and death of Mr. Akunov in detention, and the failure of the Kyrgyz Republic to investigate this case, culminating with a statement from the United Nations Committee against Torture that Mr. Akunov had been tortured.
70. On 19 April 2007, the Kyrgyz Parliament adopted a resolution criticizing authorities in the eastern Naryn province for illegally detaining Mr. Akunov. The deputies called for an impartial investigation into Mr. Akunov's death and urged President Bakiev to dismiss the provincial Governor of Naryn Oblast and the Mayor of Naryn City.¹⁰¹ The resolution also urged the President to relieve Chief of Police Nuraliyev from his position as Head of the Naryn City Department of Internal Affairs.

⁹⁶ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 21.

⁹⁷ Exhibit 16 – Acting Prosecutor-General, “Resolution on initiation of proceedings due to newly discovered circumstances”, 10 June 2010.

⁹⁸ Exhibit 17(a) – Naryn Oblast Prosecutor's Office, “Decision on acceptance of inspection of newly discovered evidence in production”, 18 June 2010.

⁹⁹ Exhibit 18 – Conclusion of Naryn Region Prosecutor, 17 July 2010.

¹⁰⁰ Exhibit 19 – Decision of the Supreme Court of the Kyrgyz Republic, 7 October 2010.

¹⁰¹ Exhibit 48 – Radio Free Europe Radio Liberty, “Kyrgyz parliament confirms constitutional nominees,” 20 April 2007. Available at: <http://www.rferl.org/content/article/1143856.html>.

71. Shortly after Mr. Akunov's death, the *Kylym Shamy* Centre for Human Rights Protection led an independent investigation into Mr. Akunov's death by a range of human rights NGOs. This investigation raised concerns regarding the basis for Mr. Akunov's detention and noted irregularities in the release of other detainees from the police station, including one who was arrested for public intoxication but released after one hour without explanation and while Chief Nuraliev was absent, leaving Mr. Akunov detained alone overnight. The resulting report also recorded eyewitness testimony of Mr. Akunov being beaten by the police and of his cries for help during that beating and throughout the night, and noted that the wall of Mr. Akunov's cell contained a message written in blood to the effect that "this day will pass".¹⁰² The presence of this message is confirmed by Urmatbek Akunov, who clarifies that other detainees say that no such message was in the cell before Mr. Akunov was detained.¹⁰³
72. On 2 May 2007, the United Nations Special Representative on Human Rights Defenders and the Special Rapporteur on Torture sent a letter of allegation to the Kyrgyz government regarding the death of Mr. Akunov. The Special Rapporteurs reported that according to the information they had received "he showed signs of brutal beating". They expressed concern that he "had been subject to inhumane and degrading treatment whilst in detention", called on the government to provide further information regarding Mr. Akunov's death, and recommended a thorough investigation.¹⁰⁴ The Kyrgyz government did not respond.
73. On 24 May 2007, *Agym*, a local Kyrgyz newspaper, reported on Mr. Akunov's death.¹⁰⁵ The article stated that doctors, who wished to maintain their anonymity, had told Urmatbek Akunov that his father was most likely strangled with a cellophane package. Another newspaper, *Komsomol Truth*, also commented that strangulation was the actual cause of Mr. Akunov's death.¹⁰⁶
74. On 22 August 2007, the International Helsinki Federation for Human Rights, the *Kylym Shamy* Centre for Human Rights Protection, and the Kyrgyz Committee for Human Rights expressed their concern over the use of torture by police in the city of Naryn. The organizations found that Mr. Akunov's case "appears to be ... a death that has been the result of ill-treatment by the authorities."¹⁰⁷ The organizations urged the Kyrgyz Ministry of Interior to appoint an independent body to further investigate Mr. Akunov's death, as well as other cases involving allegations of police violence.¹⁰⁸ Other international actors such as the World Organisation Against Torture (OMCT)¹⁰⁹ and the United States Department of State¹¹⁰ also expressed grave concerns regarding the arrest, detention, and resulting death of Mr. Akunov in custody.

¹⁰² Exhibit 41 – Conclusion of the Investigation of Bektemir Akunov's death, 20 April 2007.

¹⁰³ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 18.

¹⁰⁴ Human Rights Council, "Report of Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani," Seventh Session, A/HRC/7/28/Add.1, 5 March 2008, paras. 1268-1270, 1277-1279. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G08/114/44/PDF/G0811444.pdf?OpenElement>

¹⁰⁵ Exhibit 43 – Kyrgyz Committee for Human Rights, "The Central Bank of Russia goes on a trace of financial activity of younger Bakiev," 24 May 2007. Available at: <http://www.kchr.org/!05-May-2007/e20070524.html>.

¹⁰⁶ *Ibid.*

¹⁰⁷ Exhibit 50 – Radio Free Europe Radio Liberty, "Rights Groups Sound Alarm over Torture Deaths," 23 August 2007. Available at: <http://www.rferl.org/content/article/1347633.html>.

¹⁰⁸ Exhibit 49 – International Helsinki for Human Rights, "Kyrgyzstan: Cases of death under torture mounting in the City of Naryn," 22 August 2007. Available at: http://www.hrea.org/lists2/display.php?language_id=1&id=5603.

¹⁰⁹ Exhibit 42 – World Organization Against Torture (OMCT), "Kyrgyzstan: Arbitrary arrest, alleged ill-treatment and death of Mr. Bektemir Akunov," KGZ 250407. Available at: <http://www.omct.org/urgent-campaigns/urgent-interventions/kyrgyzstan/2007/04/d18607/>.

¹¹⁰ Exhibit 51 – United States of America, Department of State, 2008 Human Rights Report: Kyrgyz Republic. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119136.htm>.

75. Finally, on 23 June 2009, as part of its periodic review of Kyrgyzstan, the United Nations Committee against Torture stated that “[r]eports of independent experts indicate that the activist Bektemir Akunov had been tortured prior to his death in detention”. The Committee asked the Kyrgyz Republic to update it on the status of the investigations into these reports, and on the prosecution of the two policemen in Akunov’s case, including whether more serious charges had been brought.¹¹¹ The Kyrgyz Republic has not published any response to this request.

The Kyrgyz Legal System and Systemic Failure to Investigate Abuses in Detention

76. The independent NGO investigation into Mr. Akunov’s death reported that “torture in the Naryn region DIA [Department of Internal Affairs], especially in Naryn city, has a strong systemic nature”.¹¹² A number of other international bodies and reports have confirmed this pattern of torture in police custody in the Kyrgyz Republic, and a consistent failure to independently and effectively investigate such abuse, of which the torture and death of Mr. Akunov form a part.

Torture in Police Detention

77. Torture is widespread in Kyrgyzstan. In 2000, this Committee was “gravely concerned about instances of torture, inhuman treatment and abuse of power by law enforcement officials” in the Kyrgyz Republic.¹¹³ However, the problems continue.
78. In 2005, Human Rights Watch noted: “Continuing reports of police abuse in 2005, including torture of adult and children detainees, further undermined people’s confidence in the government’s promises of reform.”¹¹⁴ The same year, the U.S. Department of State similarly noted that:

“The law prohibits [torture and other cruel, inhuman, or degrading treatment]; however, police and SNB forces employed them. At times police beat detainees and prisoners to extract confessions. ... In September the human rights ombudsman expressed concern over a number of incidents involving abuse of detainees”.¹¹⁵

79. Recently, in their joint submission to the Human Rights Council during the Universal Periodic Review (“UPR”) of Kyrgyzstan, a group of leading anti-torture NGOs in Kyrgyzstan described “reports received since March 2007 from victims and their relatives of more than 200 cases of torture and cruel treatment, 92 per cent of them allegedly committed by the police.” The submission stated that

“police continue to torture and mistreat people in detention with impunity ... Police often fail to register suspects at the time of apprehension, keeping them in unregistered custody for hours or even days ... Often the person is then tortured, resulting in a signed confession and/or serious health problems, sometimes even death.”¹¹⁶

¹¹¹ Committee against Torture, “List of issues prior to the submission of the second periodic report of Kyrgyzstan,” CAT/C/KGZ/Q/2, 23 June 2009, para. 25.

¹¹² Exhibit 41 – Conclusion of the Investigation of Bektemir Akunov’s death, 20 April 2007.

¹¹³ *Concluding observations of the Human Rights Committee, The Kyrgyz Republic*, U.N. Doc. CCPR/CO/69/KGZ, 24 July 2000, at para. 7.

¹¹⁴ Exhibit 46 – Human Rights Watch, *World Report 2006*, “Kyrgyzstan,” at page 377. Available at: <http://www.hrw.org/legacy/wr2k6/wr2006.pdf>.

¹¹⁵ Exhibit 45 – U.S. Bureau of Democracy, Human Rights, and Labor, *Country Report on Human Rights Practices, Kyrgyz Republic*, 2005, Section 1C. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61657.htm>.

¹¹⁶ Exhibit 44 – The Golos Svobody (Bishkek), Spravedlivost (Jalal-Abad) and Advocacy Center on Human Rights (Osh), *Joint Submission to the UN Universal Periodic Review of Kyrgyzstan*, 8th Session, 3-14 May 2010, pp. 1-2.

Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS4_GS_UPR_KGZ_S08_2010_TheGolosSvobody.pdf.

80. Amnesty International similarly noted in its UPR submission to the Human Rights Council that “torture and other ill-treatment remained widespread and is practiced with impunity. According to AI, beatings by law enforcement officers appear to continue to be routine. According to AI, human rights defenders have also reported deaths in custody as a result of torture.”¹¹⁷
81. In its 2010 World Report, Human Rights Watch called attention to the fact that “[a]lthough Kyrgyzstan ratified the Optional Protocol to the Convention against Torture in 2008, torture and ill-treatment remain rampant.”¹¹⁸

Consistent Failure to Investigate Torture by Police

82. 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”.¹¹⁹ No such steps have been taken.
83. In September 2005, the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, visited Kyrgyzstan and expressed concern “about a general failure to ensure prompt, impartial and full investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment, as well as a general failure to prosecute, where appropriate, the alleged perpetrators. In particular, prosecutors often appear unwilling to initiate criminal prosecutions in this regard, and the Special Rapporteur was not able to obtain information on any criminal prosecutions that have been brought for torture or ill-treatment.”¹²⁰

The Special Rapporteur concluded that “the various limitations on the independence of the judiciary ... mean that judges regularly conduct proceedings in favour of the prosecution,”¹²¹ and “note[d] with concern that the provisions of the prosecutor’s office are set out in the chapter of the Constitution relating to the executive power.”¹²²

84. The Special Rapporteur reported that despite some efforts to improve the situation “a number of issues continue to have a negative impact on the independence of the judges and lawyers. As a result, the judiciary still does not operate as a fully independent institution capable of fulfilling its fundamental role of administering fair and independent justice and safeguarding and protecting human rights.”¹²³

The Special Rapporteur identified length of tenure and procedures for appointment and dismissal as preventing the judiciary from operating independently, and also commented on widespread judicial corruption. In addition, he confirmed that prosecutor’s offices “play an extremely dominant role in

¹¹⁷ Summary prepared by OHCHR in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para 17.

¹¹⁸ Exhibit 55 – Human Rights Watch, *World Report 2010, “Kyrgyzstan”* Available at: <http://www.hrw.org/en/node/87615>.

¹¹⁹ *Concluding observations of the Human Rights Committee, The Kyrgyz Republic*, U.N. Doc. CCPR/CO/69/KGZ, 24 July 2000, at para. 7

¹²⁰ The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, *Mission to Kyrgyzstan*, 18-22 September and 1 October 2005, U.N. Doc. E/CN.4/2006/52/Add.3, at para. 29.

¹²¹ *Ibid.*, at para. 51.

¹²² *Ibid.*, at para. 49.

¹²³ *Ibid.*, at page 2.

the administration of justice” and that they “exercise supervisory powers and exert disproportionate influence over the pretrial and trial stages of judicial proceedings.”¹²⁴

85. Despite several constitutional and other legislative amendments since the visit of the Special Rapporteur,¹²⁵ the fundamental shortcomings of the Kyrgyz judicial system and impunity of perpetrators of torture remain. Many of his recommendations and concerns were echoed during the process for Universal Periodic Review (UPR) by the Human Rights Council in 2010. Kyrgyzstan received recommendations to “[s]trengthen its safeguards against torture, including through the improvement of conditions in prisons and detention facilities and the establishment of a complaint mechanism for victims of torture”;¹²⁶ to “ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture of any person subjected to any form of arrest, detention or imprisonment”;¹²⁷ and to “[e]stablish constitutional reforms that will guarantee the separation of powers, the rule of law, the independence of the judiciary.”¹²⁸
86. The joint UPR submission of the leading anti-torture NGOs in Kyrgyzstan also “raised concerns about the lack of accountability for deaths in custody and recommended preventing and duly investigating all cases of death in custody in accordance with international standards”.¹²⁹ It observed that even if charges are brought in a case of torture, they “are generally brought not for torture, but for other crimes of less gravity, such as negligence”¹³⁰ although torture was only “a ‘minor crime’ under the law with punishment not corresponding to the gravity of the offence.”¹³¹ This impacted on the ability of victims to obtain compensation, because “Kyrgyz law does not allow victims of torture to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture [...and] since the criminalization of torture in 2003, no victim of torture had received monetary compensation.”¹³²
87. Amnesty International similarly recommended that the Kyrgyz Republic “ensure prompt, impartial and comprehensive investigations of all complaints of torture or cruel, inhuman or degrading treatment”,¹³³ specifically recommending that the government “establish a fully resourced independent agency to investigate all allegations of human rights violations by officers of all law enforcement agencies”.¹³⁴ It also stated “that corruption in law enforcement and the judiciary was believed to significantly contribute to a climate of impunity.”¹³⁵

Attacks against Civil Society and Political Activists by Kyrgyz Authorities

¹²⁴ *Ibid.*, at page 2; see also para. 76.

¹²⁵ Several Constitutional amendments were adopted in Kyrgyzstan since 2005 and the version adopted by referendum in June 2010 separates prosecutor’s office from the executive to the “Other state authorities.” This does not change the situation which Mr. Akunov’s family faced when attempting to obtain justice for his death in 2006; and in any event, these amendments have had little practical impact.

¹²⁶ Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, U.N. Doc. A/HRC/15/2, at para 76.53.

¹²⁷ *Ibid.*, at para. 76.54.

¹²⁸ *Ibid.*, at para. 76.4.

¹²⁹ Summary prepared by OHCHR in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para 27.

¹³⁰ *Ibid.*, at para. 28.

¹³¹ *Ibid.*, at para. 16.

¹³² *Ibid.*, at para. 28.

¹³³ *Ibid.*, at para. 17.

¹³⁴ Amnesty International, Kyrgyzstan: Submission to the UN Universal Periodic Review: Eighth session of the UPR Working Group of the Human Rights Council, May 2010, AI Index: EUR 58/001/2009 (2 November 2009), at p. 6.

¹³⁵ *Ibid.*, at para. 26.

88. The violations against Mr. Akunov established above are also consistent with the Kyrgyz authorities' hostility toward civil society and political activists, which began under the government of former President Kurmanbek Bakiev in March 2005.¹³⁶
89. A report by Human Rights Watch documents the Kyrgyz authorities' harsh treatment of political demonstrators, particularly members of opposition movements throughout 2007 in which Mr. Akunov took part:
- “On April 19, 2007, opposition demonstrations in the capital Bishkek calling for constitutional reform and for President Bakiev’s resignation were dispersed by police. The State Committee of National Security detained and interrogated dozens of protesters. Several leaders of the opposition movement United Front were charged with organizing mass disturbances, but the charges were ultimately dropped; however, four members of the movement were convicted on what appear to be politically motivated charges ...
- On several occasions authorities prevented protestors from reaching the site of a demonstration, confiscated posters, temporarily seized equipment, and sentenced organizers for administrative misdemeanors on what appear to be politically motivated grounds.”¹³⁷
90. A report on Kyrgyzstan by the International Center for Transitional Justice (ICTJ) reinforces these findings, noting that abuses during the reign of President Bakiev included widespread police brutality against members of political opposition parties.¹³⁸ The report addresses the Ministry of Internal Affairs’ record of systematic human rights violations, and concludes that the “reputations of these police forces have been gravely damaged by widespread allegations of corruption, inefficiency, and mistreating people in police detention.”¹³⁹

VII. ADMISSIBILITY

91. This petition satisfies the requirements for admissibility under Article 5 of the first Optional Protocol. The victim’s family has made extensive efforts at the domestic level to obtain a proper investigation into the torture and death of Mr. Akunov, and has therefore exhausted all available and effective domestic remedies.
- A. Temporal Jurisdiction**
92. 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 April 2007. This communication therefore falls within the temporal jurisdiction of the Committee.
- B. No other international complaint**
93. No complaint has been submitted to any other procedure of international investigation or settlement regarding the torture and death of Mr. Akunov and the inadequacy of the subsequent investigation. The fact that other international bodies have raised concerns over the torture and death of Mr.

¹³⁶ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, paras. 12, 26. Examples of this repression include the shooting of a well-known independent journalist Alisher Saipov in the middle of the day in October 2007 in Osh; another independent Kyrgyz journalist, Gennady Pavlyuk, was killed in 2009 in Almaty, Kazakhstan; and several parliamentarians and former government officials were killed in 2006-09.

¹³⁷ Exhibit 52 – Human Rights Watch, *World Report 2008*, “Kyrgyzstan: Events of 2007”. Available at: <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/kyrgyz17745.htm>.

¹³⁸ Exhibit 54 – International Center for Transitional Justice, “Assessing a Transitional Justice Approach for Kyrgyzstan”, August 2010, at page 24. Available at: <http://ictj.org/sites/default/files/ICTJ-Kyrgyzstan-TJ-2010-English.pdf>.

¹³⁹ *Ibid.*, at page 29.

Akunov in other contexts does not prevent this Committee from examining and ruling on this individual 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

94. As outlined above, Mr. Akunov's family has made extensive efforts to obtain an effective investigation into his mistreatment and death, satisfying the requirement for the exhaustion of domestic remedies in Article 5(2)(b) of the first Optional Protocol. The Author made repeated requests to the investigating and prosecuting authorities, numerous judicial challenges, and appeals up to the Supreme Court of the Kyrgyz Republic. Any other domestic civil or disciplinary remedies in this case are unavailable or are ineffective given the nature of the violations.

95. An applicant is required to exhaust those domestic remedies which are available and effective.¹⁴⁰ The Committee has clarified that this refers "primarily to judicial remedies"¹⁴¹ which must offer "a reasonable prospect of redress".¹⁴² 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."¹⁴³

1. The Author has exhausted domestic remedies

96. The Author has exhausted all effective domestic remedies in relation to torture and death of Mr. Akunov. He has made repeated requests that those responsible be punished; has identified the perpetrators; has proactively taken investigative steps and obtained evidence to support the investigation; and has challenged the ultimate failure to prosecute this case before the courts.

97. Although a criminal investigation was opened against two police officers who were on duty on the day that Mr. Akunov died, no investigation was ever conducted against the officers who arrested and beat Mr. Akunov the night before. Between May 2007 and February 2008, Urmatbek Akunov filed three requests with the City Prosecutor's office that it initiate criminal proceedings against the four police officers who were involved in the arrest of Mr. Akunov. Although Urmatbek Akunov supported his allegations with extensive testimony from witnesses in the vicinity of the detention facility, as well as forensic evidence regarding the circumstances of Mr. Akunov's death, the Prosecutor's office consistently responded that it had "no grounds" to pursue the allegations. In June 2010, Urmatbek Akunov filed a fourth request with the Prosecutor General's Office which resulted in a cursory and ineffective investigation.

98. The Author has also exhausted the judicial remedies available. He made a detailed submission to the Naryn City Court on 24 August 2007, outlining the deficiencies in the investigation, pointing to the evidence available such as witness statements and results of forensic examinations and highlighting the facts and circumstances that required further investigation, and requesting that the court remand the case for further investigation. On 27 August 2007, the Naryn City Court returned

¹⁴⁰ "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)

¹⁴¹ *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

¹⁴² *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").

¹⁴³ *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.

the criminal case against two police officers to the Prosecutor's Office to address deficiencies in the investigation of Mr. Akunov's death – a decision which was confirmed by the Appeals and Supreme Courts.

99. However, despite these court orders, on 15 February 2008 the investigator at the Naryn Department of Internal Affairs again concluded that no crimes were committed by the alleged perpetrators and thus no criminal proceedings were instituted against them. On 25 February 2008, Urmatbek Akunov again appealed this decision, however his appeal was denied on the same day.
100. As a result of the refusal to investigate the officers who arrested and beat Mr. Akunov, and the deficiencies in the investigation of the two officers who were on duty on the day of his death, only one policeman has suffered any sanction for the torture and death of Mr. Akunov. On 4 April 2008, Officer Kozhombardiev was convicted of negligence and given a suspended sentence, and the only other officer charged in this case was acquitted.¹⁴⁴
101. Even after this inadequate trial, Urmatbek Akunov continued his efforts to secure a proper investigation, filing a fourth petition to Prosecutor-General's Office indicating that the earlier investigation and proceedings did not consider all facts and circumstances surrounding the death of Mr. Akunov. While the Prosecutor-General's Office briefly re-opened the investigation on 10 June 2010, it was concluded one month later on 17 July 2010, and the Supreme Court issued a ruling on 7 October 2010 refusing to order any further investigation and stating that all facts and circumstances highlighted in Urmatbek Akunov's petition were addressed by investigation.
102. The Author has therefore exhausted all available domestic remedies in relation to the criminal investigation.

2. Other remedies are ineffective or unavailable in this case

103. The Author is not required to pursue other remedies such as civil or disciplinary proceedings, and those penalties which have been imposed or remedies which have been granted are wholly inadequate and ineffective. In light of the gravity of the violation against Mr. Akunov, nothing less than a criminal investigation and prosecution would constitute an effective remedy, as administrative or disciplinary measures cannot be considered adequate or effective for serious violations such as the right to life.
104. The minor penalties which have been imposed in relation to the abuse and death of Mr. Akunov cannot be considered an effective remedy. Only one police officer has suffered any penalty: Kozhombardiev, one of the two officers who were on duty on 15 April 2007, who was found guilty of negligence. However this "is considered to be in the group of [crimes] not posing great danger and a crime resulting from carelessness", and Officer Kozhombardiev was only given a suspended sentence of conditional imprisonment with probation period of one year.¹⁴⁵ This cannot be considered as an effective remedy for the beating, torture and killing of a civic activist.
105. In addition, the Author's civil claims for compensation have not resulted in an effective remedy. As discussed in more detail below in paragraphs 194 to 197 below, the compensation which was eventually granted was wholly inadequate and failed to recognise or remedy the serious violations of Mr. Akunov's rights which were inflicted upon him while in custody. Mr. Akunov's family is unable to pursue further civil claims against the police officers involved in the abuse and death of Mr. Akunov because the criminal charges against those officers have been terminated, and such civil claims against state officials can only be brought in the context of a criminal prosecution.¹⁴⁶

¹⁴⁴ Exhibit 13 – Naryn City Court, "Order against Kozhombardiev and Zhunushbaev," 4 April 2008.

¹⁴⁵ *Ibid.*

¹⁴⁶ See Summary prepared by OHCHR in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para 27.

Any further remedies are therefore not available in this case; and even if they were they could not be considered an adequate or effective remedy for torture resulting in the death of the victim.

VIII. VIOLATIONS OF THE ICCPR

106. The Kyrgyz Republic violated the ICCPR in the following ways:

- A. *Arbitrary Killing.* The Kyrgyz Republic is responsible for the death of Mr. Akunov, who was detained by the authorities in good health, was beaten by police officers, and was then found dead in their custody the next day. The State is presumed to be responsible for any death in custody, and has not provided any reliable evidence or explanation of how Mr. Akunov died. The Kyrgyz Republic is therefore responsible for a violation of Article 6(1) of the ICCPR.
- B. *Torture.* The treatment inflicted upon Mr. Akunov by police officers while in their custody amounts to torture in violation of Article 7 of the ICCPR, or at a minimum to cruel and inhuman treatment. These injuries cannot be explained or excused by Mr. Akunov's alleged attempt to escape or as incidental to his supposed suicide.
- C. *Lack of Safeguards.* The Kyrgyz Republic failed to take measures to protect Mr. Akunov from torture and from the arbitrary deprivation of his life, in violation of Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3).
- D. *Failure to conduct an effective investigation.* The Kyrgyz Republic failed to conduct a prompt, impartial, thorough, and effective investigation in violation of Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3).
- E. *Failure to provide redress.* The Kyrgyz Republic failed to provide access to effective remedies for the torture and death of Mr. Akunov, including compensation and adequate reparation, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3).
- F. *Arbitrary Detention and Freedom of Expression.* The authorities detained Mr. Akunov, and subsequently tortured and killed him, in response to his civic and political activism and expression of views critical of the government. This detention was not for a legitimate purpose, and therefore arbitrary in violation of Article 9(1) of the ICCPR; and his mistreatment and death violated his freedom of expression under Article 19 of the ICCPR.

A. Arbitrary Killing: Article 6(1)

107. The Kyrgyz Republic is responsible for the death of Mr. Akunov. Mr. Akunov was detained by police officers in good health, was beaten while in police custody, and repeatedly cried out that he feared for his life. The next day, he was found dead in the police detention cell. The Kyrgyz Republic has failed to properly investigate or explain Mr. Akunov's death in custody, so as to rebut the presumption that his death was an arbitrary killing. The Kyrgyz Republic is thus responsible for the death of Mr. Akunov, in violation of Article 6(1) of the ICCPR.
108. Article 6(1) of the ICCPR states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The Committee has consistently found the right to life to be the "supreme right", which it has stressed "should not be interpreted narrowly."¹⁴⁷ The Committee has described the duty to refrain from arbitrary deprivation of life as "of paramount importance", calling on State parties to "take measures not only to prevent

¹⁴⁷ UNHRC, *General Comment 6: The Right to Life (Art. 6)*, 1982, at para. 1.

and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.”¹⁴⁸

109. This Committee recently ruled that “a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution”, unless that presumption can be rebutted by a “thorough, prompt and impartial investigation”.¹⁴⁹ This underlying principle applies equally in cases where the state claimed that the death was suicide.¹⁵⁰
110. The Committee has acknowledged that where an individual dies in custody, applicants face evidentiary difficulties in proving the precise cause and circumstances of death. In such a case, a violation of Article 6(1) will generally be found, unless an effective and timely investigation shows otherwise. In death in custody cases, “the burden of proof ... cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and ... frequently the State party alone has access to relevant information.”¹⁵¹
111. Mr. Akunov was taken into police custody on the evening of 14 April 2007. At that time, he was healthy, and was not suffering from any mental condition which would suggest that he was suicidal. During his time in police custody, numerous witnesses saw Mr. Akunov being severely beaten by the police and screaming for help because the police were, according to Mr. Akunov, “killing” him. The next day, Mr. Akunov was found dead in his detention cell. The Kyrgyz Republic has failed to meaningfully and objectively investigate this case sufficient to provide a plausible explanation for his death. In particular:
- *No adequate explanation of injuries* (see paras. 169 to 172, below). Mr. Akunov suffered extensive injuries while detained by the police on 14 to 15 April 2007, which are recorded in the autopsy and medical examinations (see paras. 32 to 36, above). Neither of the explanations offered by the investigation adequately explains the nature and extent of the injuries suffered by Mr. Akunov.
 - *No explanation of fear for his life* (see paras. 168 and 175, below). The investigation did not examine Mr. Akunov’s repeated cries while being beaten that the police would kill him and that he would not leave the station alive; what caused Mr. Akunov to continue to cry for help throughout the night; or the writing in blood saying “this day will pass” which was found on the wall of Mr. Akunov’s cell.
 - *No motive for suicide* (see para. 176, below). The official investigation finally did not provide any motive or explanation for why Mr. Akunov allegedly hung himself, which is particularly striking in this case as Mr. Akunov had recently completed a hunger strike, showing that he was motivated to pursue his civic work and did not easily succumb to discomforts; and approximately 12 hours before the police claim Mr. Akunov committed suicide, the police claim that he fled the police station and cried out to nearby residents that he was doing this in an attempt to preserve his life.
112. These factors cast serious doubt on the official claim that Mr. Akunov committed suicide. At a minimum, the flawed investigation that failed to address these critical issues is insufficient to

¹⁴⁸ *Ibid.*, at para. 3.

¹⁴⁹ *Eshonov v Uzbekistan*, UNHRC, Views of 22 July 2010, U.N. Doc. CCPR/C/9/D/1225/2003, para. 9.2.

¹⁵⁰ *Dermitt Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para. 9.2.

¹⁵¹ *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. Supp. No. 40 (A/37/40) at 130 (Communication No. R.7/30), para. 13.3; *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, U.N. Doc. CCPR/C/51/D/458/1991, para. 9.2.

displace the presumption that Mr. Akunov's death in custody was an arbitrary killing. As a result of the deficiencies in the investigation, which are examined in more detail in paras. 143 to 189 below, the State's claim that Mr. Akunov committed suicide is incapable of rebutting the presumption that his death in custody was an arbitrary killing.

113. As a result, the Kyrgyz Republic is responsible for the arbitrary killing of Mr. Akunov, in violation of Article 6(1) of the ICCPR.

B. Torture of Mr. Akunov: Article 7

114. The treatment inflicted upon Mr. Akunov by police officers while in their custody amounts to torture, or at a minimum to cruel, inhuman or degrading treatment, contrary to Article 7 of the ICCPR.
115. The prohibition of torture and cruel and inhuman treatment is absolute. This Committee has made it clear that "article 7 allows of no limitation".¹⁵² There is no list of acts which do and do not constitute torture or inhuman treatment; rather, the assessment "depends on all the circumstances of the case, such as the duration and manner of the treatment, [and] its physical or mental effects".¹⁵³ As part of this assessment, repeated beatings in custody have been found to constitute torture or cruel and inhuman treatment under Article 7, especially where the victim is denied medical care for their injuries.¹⁵⁴
116. As with deaths in custody, when a person is tortured in custody the state will have total control of access to the evidence and the burden of proof cannot rest on the author of the communication alone.¹⁵⁵ Rather, the burden will shift to the government to provide a satisfactory and plausible explanation supported by evidence. In this case, there is physical evidence that Mr. Akunov was tortured; and the Kyrgyz Republic has failed to provide a satisfactory explanation for how the majority of his injuries were suffered.
117. The police officers inflicted severe physical and mental pain and suffering by delivering heavy blows to his body. These beatings caused multiple abrasions and bruises on various parts of Mr. Akunov's body, as well as hemorrhaging in his brain and lungs. The severity of his injuries are detailed in the medical evidence, as described above (see paras. 32 to 36, above). The impact of the beatings on Mr. Akunov is also confirmed by Karmanbek Samakov, a member of the Kyrgyz Parliament, who was present during an examination of Mr. Akunov's body (see para. 34, above). A number of independent groups have investigated the abuse of Mr. Akunov and have credibly reported on his torture prior to his death (see paras. 70 to 74, above), and the Committee against Torture has confirmed that "[r]eports of independent experts indicate that the activist Bektemir Akunov had been tortured prior to his death in detention" (see para. 75, above).
118. As outlined above and described in more detail below, many of the injuries inflicted on Mr. Akunov are inconsistent with restraining him and returning him to custody, but rather suggest that Mr. Akunov was beaten (see para. 111 above, and paras. 169 to 171, above). The witnesses who saw the police beating Mr. Akunov confirm that the force they used was not directed at simply returning him to custody, and that the police were kicking Mr. Akunov from behind and continuing to beat him even after he was handcuffed and defenceless (see paras. 21 to 23, above). The police

¹⁵² UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, paras. 3, 5.

¹⁵³ *Vuolanne v Finland*, UNHRC, Views of 7 April 1989, U.N. Doc. CCPR/C/35/D/265/1987, para. 9.2. See also UNHRC, *General Comment 20, Article 7*, 1992, para. 4.

¹⁵⁴ *Bailey v. Jamaica*, UNHRC Views of 31 March 1993, U.N. Doc. CCPR/C/47/D/334/1988, para. 9.2 – 9.3; *Linton v. Jamaica*, HRC, Views of 22 October 1992, U.N. Doc. CCPR/C/46/D/255/1987, para. 8.5.

¹⁵⁵ *Bouroual v. Algeria*, UNHRC, Views of 30 March 2006, U.N. Doc. CCPR/C/86/D/992/2001, para. 9.4; *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. CCPR/C/15/D/30/1978, at para. 2.4, 13.3 and 14.

failed to call medical assistance after that beating, or at any stage that night. It appears that this mistreatment continued into the night, well after Mr. Akunov had been returned to the police station, as Mr. Akunov's cries for help were heard by nearby residents until approximately 05:00 in the morning (see paras. 26 and 111, above).

119. The severity and nature of the mistreatment of Mr. Akunov by the police, combined with the failure to seek medical assistance, constitutes torture under Article 7 of the ICCPR. The torture of Mr. Akunov is, moreover, consistent with a widespread pattern of abuse and torture of persons in police custody in the Kyrgyz Republic (see paras. 76 to 87, above). In the alternative, and at a minimum, the serious beating which was well in excess of any legitimate law enforcement purpose constitutes cruel and inhuman treatment.
120. The Kyrgyz Republic is therefore responsible for a violation of Article 7 as a result of the torture of Mr. Akunov while in the custody of the police.

C. Failure to Adopt Safeguards: Articles 6(1) and 7

121. A number of administrative and procedural failings allowed the torture and death of Mr. Akunov to occur. The Kyrgyz Republic failed to provide adequate safeguards to protect Mr. Akunov's life and to protect him from torture, in violation of Articles 6(1) and 7 of the ICCPR. Specifically, it failed to properly register his detention, to inform his family of his detention, to provide access to a lawyer, and to conduct a medical examination.
122. The right to life includes the positive duty on the State to put in place safeguards to protect life, as well as the obligation not to arbitrarily deprive a person of their life.¹⁵⁶ The Committee has recognized the positive obligation to take adequate measures to protect the right to life in a number of its decisions,¹⁵⁷ and has "reminded [States] of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3".¹⁵⁸
123. The positive obligation to protect life applies in particular to persons who are in state custody: "it is incumbent on States to ensure the right of life of detainees ... the State party by arresting and detaining individuals takes the responsibility to care for their life."¹⁵⁹ The Committee has recognized that prisoners are "particularly vulnerable",¹⁶⁰ imposing a special responsibility on the State to take adequate and appropriate measures to protect them.¹⁶¹ Where a state fails to take "adequate measures" to protect prisoners, they may be responsible for a violation of Article 6(1).¹⁶²
124. The Committee has also emphasized the importance of implementing safeguards to protect detainees from torture and abuse. 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

¹⁵⁶ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, at para. 8.

¹⁵⁷ See e.g. *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para 9.2.

¹⁵⁸ UNHRC, *General Comment 31*, 2004, para. 8.

¹⁵⁹ *Lantsova v Russia*, UNHRC, Views of 15 April 2002, U.N. Doc. CCPR/C/74/D/763/1997, para. 9.2; see also *Titiahonjo v Cameroon*, UNHRC, Views of 13 November 2007, U.N. Doc. CCPR/C/91/D/1186/2003, para. 6.2.

¹⁶⁰ UNHRC, *General Comment 21, Right to Humane Treatment and Respect for Human Dignity*, 1992, para. 3.

¹⁶¹ *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para.

9.2. *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. CCPR/C/15/D/30/1978, at para. 11.2 & 13.3.

¹⁶² *Dermit Barbato v. Uruguay*, at para 9.2.

medical examination.¹⁶³ The Committee has stressed that States have a duty to train relevant personnel, such as police officers and prison guards, to minimise the chance of violation.¹⁶⁴

Failure to Register Detention

125. The Kyrgyz Republic did not properly register the detention of Mr. Akunov. This facilitated his torture.
126. The Committee has stated that the protection of detained persons requires that “their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends”.¹⁶⁵ In addition, “the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.”¹⁶⁶
127. The UN Standard Minimum Rules also recommend that all police custody sites should record “in respect of each prisoner received: (a) Information concerning his identity; (b) The reasons for his commitment and the authority therefore; (c) The day and hour of his admission and release” in a designated register. Furthermore, places of detention should not receive people into custody “without a valid commitment order of which the details shall have been previously entered in the register.”¹⁶⁷ The UN Special Rapporteur on Torture has also recommended that states “[r]egister persons deprived of their liberty from the very moment of apprehension”.¹⁶⁸
128. In this case, the police failed to register Mr. Akunov’s detention properly, allowing the police to detain him for a period longer than permitted by law, facilitating his torture and leading to his death. His detention was initially based on Article 366 of the Code on Administrative Liability, which authorizes the police to detain an individual for up to three hours. However, the record was later amended to an offence that allowed for a longer period of detention (see para. 17, above). It was during this extended period of detention that Mr. Akunov was found dead.
129. The record of Mr. Akunov’s detention is also incomplete: it is neither signed by the officer responsible for registering his detention, or by any witness (see para. 17, above). At one point, the police claimed that the detention record was not signed or witnessed because the officer filling out the record was interrupted by Mr. Akunov’s “escape”.¹⁶⁹ However, Mr. Akunov was detained at 22:00, and the police do not alleged that he attempted to escape until shortly after 23:30, more than one and a half hours later.

Failure to Notify Family

130. The Kyrgyz Republic also failed to notify his family of the fact that he had been detained, despite his requests for the police to do so.

¹⁶³ UNHRC, *General Comment 20, Article 7*, 1992, at para. 11.

¹⁶⁴ *Ibid.*, at para. 10.

¹⁶⁵ *Ibid.*, at para. 11.

¹⁶⁶ *Ibid.*

¹⁶⁷ UN Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, at Rule 7 (“UN Standard Minimum Rules”).

¹⁶⁸ Special Rapporteur on Torture Report on Mission to Kazakhstan, U.N. Doc. A/HRC/13/39/Add.3, 16 December 2009, at para. 81(a).

¹⁶⁹ Exhibit 17(b) – Record of Questioning of Asanaliev, 23 June 2010; see also Exhibit 12 – Order denying a motion to reverse the decision to terminate prosecution, 25 February 2008.

131. As the Committee has noted, one of the purposes of registering detention is that information regarding the detention of a person be “readily available and accessible to those concerned, including relatives and friends”.¹⁷⁰ The Committee against Torture has listed the right “to inform a relative” as one of the “fundamental legal safeguards” which detainees must be afforded from the moment that they are deprived of their liberty.¹⁷¹ The UN Special Rapporteur on Torture has also recommended that states “grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty.”¹⁷²
132. In this case, the police failed to notify Mr. Akunov’s family of his detention.¹⁷³ The police admit that his family was not notified, which constitutes a violation of Article 563 of the Administrative Penal Code,¹⁷⁴ but claim that this is because his family lived in a village which was too far away.¹⁷⁵ However, Mr. Akunov’s son states that the family lived just at the entrance to the town where he was detained.¹⁷⁶
133. In addition, when Mr. Akunov was being beaten by the police outside the station, he specifically identified his sister Nurisa, said that she resided in the nearby building, and asked that she be notified of his detention. The police failed to do so, and discouraged the residents of the building from notifying Mr. Akunov’s sister themselves by telling them that he was “just a bum” (see para. 21, above).
134. The failure to notify Mr. Akunov’s family prevented the family from visiting Mr. Akunov in detention, from checking on his physical and mental health in detention, and from challenging the prolonged and arbitrary detention. Chief Nuraliev confirmed that Mr. Akunov would have been released on the morning of 15 April 2007, approximately three hours before his death, if a family member or other representative had applied to have him released and had taken personal responsibility for him.¹⁷⁷

Failure to Provide Access to a Lawyer

135. Mr. Akunov was not provided with access to a lawyer while in custody, which also allowed his torture to take place.
136. Detention without access to a lawyer violates human rights law.¹⁷⁸ This Committee has explicitly stated that “[t]he protection of the detainee also requires that prompt and regular access be given to doctors and lawyers”.¹⁷⁹ The U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets out detainees’ rights to consult and communicate with a lawyer without delay or censorship and in full confidentiality.¹⁸⁰ The UN Special Rapporteur on Torture has stressed that a detainee’s access to a lawyer must be prompt and that the lawyer should

¹⁷⁰ UNHRC, *General Comment 20, Article 7*, 1992, at para. 11.

¹⁷¹ *Ibid.*

¹⁷² UN Special Rapporteur on Torture, *Report on Mission to Kazakhstan*, A/HRC/13/39/Add.3, at para. 81-a.

¹⁷³ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 13.

¹⁷⁴ Exhibit 5 – Motion to the Naryn City Court to return the criminal case to the Prosecutor’s Office, 24 August 2007.

¹⁷⁵ Exhibit 12, *supra*.

¹⁷⁶ Exhibit 24, *supra*, paras. 9, 14.

¹⁷⁷ Exhibit 11 – Kanat Dzhaliloyev, Urmat Akunov’s lawyer, “Complaint against the Naryn City Prosecutorial Investigator’s decision not to prosecute the criminal case,” 25 February 2008.

¹⁷⁸ ICCPR Art. 14(3)(b); *Wight v. Madagascar*, UNHRC, Views of 1 April 1985, U.N. Doc. CCPR/C/OP/2 at para. 17.

¹⁷⁹ UNHRC, *General Comment 20, Article 7*, 1992, at para. 11.

¹⁸⁰ Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, U.N. Doc. A/RES/43/173(annex), 9 December 1988.

be independent from the state.¹⁸¹ The UN Committee against Torture has found that this is an important safeguard against torture.¹⁸²

137. At no point during his detention was Mr. Akunov given access to a lawyer or informed of his rights.¹⁸³ The failure to provide Mr. Akunov with access to a lawyer allowed the police to torture him. It also allowed the police to change the basis for his detention; and to continue to detain him beyond the three hours which was permitted under Articles 366 and 565 of the Code of Administrative Liability. This extended detention and mistreatment ultimately led to Mr. Akunov's death.

Failure to Provide Access to a Doctor

138. Mr. Akunov was not allowed to see a doctor while he was detained. This also allowed his torture to take place.
139. This Committee stated that “[t]he protection of the detainee ... requires that prompt and regular access be given to doctors.”¹⁸⁴ The UN Committee against Torture has also outlined the guarantees to protect persons deprived of their liberty from torture include the right to “independent medical assistance.”¹⁸⁵
140. 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 necessary.”¹⁸⁶ The UN Special Rapporteur on Torture has stated that “at the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention.”¹⁸⁷ The mandatory medical examination of detainees upon admission to and prior to exit from police custody helps to ensure that any change in the detainees' physical health during their time in custody is recorded, thereby deterring authorities from mistreating them.
141. Mr. Akunov was detained from approximately 22:00 on 14 April 2007 until 12:00 on 15 April 2007. At no point during this time was he allowed to see a doctor, and the police did not arrange any medical examination or check his physical or mental status. The Kyrgyz courts confirmed that these failures violated Article 566 of the Administrative Code.¹⁸⁸
142. The failure to have any system for independent medical examinations of detainees allowed police to torture Mr. Akunov. If Mr. Akunov had access to a doctor during his detention, the doctor could have identified the injuries that were being inflicted on Mr. Akunov. In particular, Mr. Akunov was not provided with any medical examination or assistance after his alleged attempt to escape, to identify which injuries were caused during this incident, whether they were consistent with him being restrained and returned to custody, and whether with those injuries he should be kept

¹⁸¹ UN Special Rapporteur on Torture, *Report on the question of torture submitted in accordance with Commission resolution 2002/38*, U.N. Doc. E/CN.4/2003/68, 17 December 2002, para. 26(g).

¹⁸² UNCAT, *G.K. v. Switzerland*, U.N. Doc. CAT/C/30/D/219/2002, 12 May 2003, at para. 6.3.

¹⁸³ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 13.

¹⁸⁴ UNHRC, *General Comment 20, Article 7*, 1992, at para. 11.

¹⁸⁵ UN Committee against Torture, *General Comment 2*, U.N. Doc. CAT/C/GC/2, 2008, para. 13.

¹⁸⁶ Body of Principles, see note 180 above, at principle 24.

¹⁸⁷ General Recommendation of the Special Rapporteur on Torture, U.N. Doc E/CN.4/2003/68, para. 26, recommendation (g).

¹⁸⁸ Exhibit 8 – Naryn Appeal Court, “Order affirming the Order of 27 August on returning the criminal case to the Prosecutor's Office,” 25 September 2007.

overnight in detention. This also allowed the police and medical examiners to later claim that some of the injuries had been caused by Mr. Akunov convulsing when he hung himself.

D. Failure to Conduct an Effective Investigation: Articles 6(1) and 7 with Article 2(3)

143. The Kyrgyz Republic failed to conduct an independent, impartial, thorough, timely, and effective investigation into Mr. Akunov's torture and death, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3) of the ICCPR.
144. As noted above, the State must conduct "a thorough, prompt and impartial investigation" into any death in custody¹⁸⁹ and the failure to provide a plausible explanation for Mr. Akunov's death in custody through such an independent investigation gives rise to a presumption that he was arbitrarily killed (see para. 109, above). In addition, the Human Rights Committee has made clear that the failure to conduct a proper investigation into a death in custody can constitute a separate violation of Article 6(1) of the ICCPR,¹⁹⁰ and of Article 2(3) which obliges State Parties to "ensure that individuals ... have accessible and effective remedies to vindicate [ICCPR rights]."¹⁹¹ In the context of an alleged suicide in state custody, an effective investigation must be capable of both establishing whether the death was indeed a suicide, as opposed to being caused by a third party or by accident, as well as examining whether the authorities could have prevented that death.¹⁹²
145. The obligation to investigate applies equally to torture and cruel and inhuman treatment under Article 7, with the Committee stating that complaints of torture "must be investigated promptly and impartially by competent authorities so as to make the remedy effective."¹⁹³ The obligation to provide an effective remedy for violations of the rights in the ICCPR "is central to the efficacy of article 2, paragraph 3,"¹⁹⁴ and "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]."¹⁹⁵
146. Here, the Kyrgyz Republic failed to conduct a satisfactory investigation into the torture and death of Mr. Akunov for the following reasons:
- *Lack of Independence and Impartiality.* The investigation was not conducted in an independent and impartial manner.
 - *Undue Delay.* The investigation was not conducted or completed promptly.
 - *Inadequacy.* The investigation failed to undertake a number of essential steps.
 - *Lack of Transparency.* The investigation was conducted in private and no final report was published.
 - *No Finding of Responsibility.* The investigation did not lead to any responsibility for the torture, and only lead to a minor prosecution for negligence which resulted in one acquittal and one suspended sentence.

1. Lack of Independence and Impartiality

¹⁸⁹ *Eshonov v Uzbekistan*, UNHRC, Views of 22 July 2010, U.N. Doc. CCPR/C/9/D/1225/2003, para. 9.2.

¹⁹⁰ *Telitsina v Russia*, UNHRC, Views of 29 March 2004, U.N. Doc. CCPR/C/80/D/888/1999, at para. 7.6.

¹⁹¹ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

¹⁹² *Trubnikov v. Russia*, ECtHR, Judgment of 5 July 2005, at para. 89.

¹⁹³ UNHRC, *General Comment 20, Article 7*, 1992, para. 14.

¹⁹⁴ UNHRC, *General Comment 31*, 2004, para. 16.

¹⁹⁵ *Ibid.* para. 15.

147. The investigation was not independent because it was conducted by the Prosecutor’s office of Naryn City, which oversees the work of the Naryn City police and office of the Department of Internal Affairs, whose officers are alleged to have tortured Mr. Akunov and bear responsibility for his death. The investigation was also not impartial because it never considered any possible cause of death other than suicide.
148. Investigations of deaths in custody and torture must be both independent and impartial. The right to an effective remedy under Article 2(3) involves “the general obligation to investigate allegations of violations . . . thoroughly and effectively through independent and impartial bodies.”¹⁹⁶ This requirement is clearly defined in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (“the Minnesota Principles”), which specifically provide that
- “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death”.¹⁹⁷
- The same principles apply to investigations of torture under the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Principles”).¹⁹⁸
149. Independence requires that the authorities charged with investigating deaths in custody must be practically independent. In the context of an investigation into torture, the Istanbul Principles require that the investigators “shall be independent of the suspected perpetrators and the agency they serve”.¹⁹⁹ This principle is reflected in the recommendations of this Committee that the police not be responsible for investigating allegations of torture which may implicate their own officers.²⁰⁰ The ECtHR has similarly held that:
- “the persons responsible for the inquiries and those conducting the investigation should be independent of anyone implicated in the events This means not only that there should be no hierarchical or institutional connection but also that the investigators should be independent in practice.”²⁰¹
150. The Istanbul Protocol indicates that where “involvement in torture by public officials is suspected . . . an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also be necessary where the expertise or the

¹⁹⁶ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

¹⁹⁷ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65, 24 May 1989, para. 9 & 11 (“Minnesota Principles”).

¹⁹⁸ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 2 (“Istanbul Principles”). These principles are set out in Annex I to the Istanbul Protocol: 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*, U.N. Professional Training Series No. 8/Rev.1, at para. 214 (2004) (“Istanbul Protocol”). Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

¹⁹⁹ Istanbul Principles, note 198, para. 2.

²⁰⁰ UNHRC, Concluding Observations on Hong Kong (1996), U.N. Doc. CCPR/C/79/Add. 57, para. 11; Concluding Observations on Kenya, (2005) U.N. Doc. CCPR/CO/83/KEN, para. 18. The UN Special Rapporteur on Torture made similar observations: see e.g. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Mission to Kazakhstan*, U.N. Doc A/HRC/13/39/Add.3, para. 49.

²⁰¹ *Bati and Others v. Turkey*, ECtHR, Judgment of 3 September 2005, at para. 135.

impartiality of the investigators is called into question. ... Specifically, this applies in circumstances where the victim was last seen unharmed in police custody or detention.”²⁰²

151. In addition, an impartial investigation must be directed at uncovering the facts regarding what happened to the victim. Such an investigation cannot “rely on hasty ... conclusions to close their investigation or as the basis of their decision.”²⁰³
152. In Mr. Akunov’s case, the investigation was not independent in practice. The investigation was conducted by the Naryn City Prosecutor’s Office which oversees the work of the Naryn City offices of the police and the Department of Internal Affairs. These offices work closely together, and have a shared interest in obtaining convictions. In the Kyrgyz Republic, the rate of convictions is a key element of the evaluation of the police and prosecutor’s performance and they work together to bring convictions, often at the expense of the rights of the accused. As a result, this shared interest undermines the independence of either in investigating cases of torture by police. The International Crisis Group confirmed that collaboration between prosecutors and police prevented independent investigation of pre-trial abuses in its 2008 briefing on the challenges of judicial reform in the Kyrgyz Republic:

“One of the key functions of the prosecutor is to supervise investigations in the pre-trial period and ensure that the rights of the accused are not abused. In theory, the prosecutor should investigate any abuses reported against defendants. In practice, few have time for this. An expert, Abdykerim Ashirov, noted that:

‘...Prosecutors do not stop torture by investigators. Investigators and prosecutors have an effective private agreement: the prosecutor, who has issued the arrest warrant, wants to confirm the accusation and turns a blind eye to the complaints of torture by those under investigation.’

His allegations are confirmed by statistics that show not a single charge was brought in 2005-2006 under Article 305-1 of the criminal code, which outlaws torture...

The supervisory area is where some of the greatest changes in the prosecutor’s role could come. However, supervision is the least prestigious of the prosecutor’s tasks, offering no potential for additional income. It can also bring a prosecutor into conflict with law enforcement agencies, whereas in many other areas, a close-knit network among police, prosecutor and judges facilitates corruption.”²⁰⁴

153. This close relationship compromised the investigation, and is consistent with the systematic refusal of prosecutors to bring charges of torture against police officers which the UN Special Rapporteurs identified (see paras. 83 to 85, above). The way in which the close relationship between the investigators and the local police compromised the investigation in this case is demonstrated by the fact that when the Prosecutor General’s Office ordered that the investigation be re-opened on 10 June 2010, it ordered that it be monitored by the Prosecutor of Naryn Oblast, rather than the City prosecutor’s office that had conducted the earlier investigation (see para. 66, above).
154. In these circumstances, where the police and prosecution authorities have a well-documented, close relationship grounded in a shared interest in securing convictions which has in the past been repeatedly shown to breach the necessary elements of independence, the investigation of his beating

²⁰² Istanbul Protocol, see note 198 above, paras. 85-86; see also Minnesota Principles, see note 197 above, at para. 11.

²⁰³ *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, at para. 69.

²⁰⁴ Exhibit 53 – International Crisis Group, Kyrgyzstan: the challenge of judicial reform, Asia Report N°150 – 10 April 2008. Available at: http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/150_kyrgyzstan_the_challenge_of_judicial_reform.pdf.

and death in police custody cannot have been carried out with adequate independence by ordinary members of the police or prosecution. In addition, Mr. Akunov was a prominent civic activist and critic of the government, which further casts doubt on the ability of ordinary members of the police or prosecution, who are members of the same executive branch of government which was the target of Mr. Akunov's criticism, to conduct an adequately independent investigation in the circumstances of this case. Taking into account the high profile and political nature of the case, only an independent commission of inquiry would be appropriate to ensure the effective and truly independent investigation of this case.

155. In addition to lacking independence, the investigation into Mr. Akunov's death was not impartial. From the very beginning of the investigation it was assumed that his death was suicide, and this theory was never meaningfully questioned by the investigators. Rather, despite the efforts of the Akunov family's lawyer, what investigation there was remained focused on the negligence of the police officers in allowing Mr. Akunov to purportedly hang himself. Even the investigation of this theory was flawed, as it was limited to considering how he could have hung himself and never examined why he may have hung himself, in particular ignoring the role that his mistreatment in detention would have played. Furthermore, where contradictions existed in the evidence, such as the police claiming that Mr. Akunov was calm and repentant on the morning of 15 April but the forensic report that he wrote an explanatory statement "in an unusual state, which could have been a state of agitation or stress", they were also ignored.
156. Such an investigation does not reveal an impartial effort aimed at, and capable of, establishing the facts and identifying and bringing to justice those responsible.

2. Undue delay

157. The investigation was not effective because it was not conducted expeditiously and there were numerous delays.
158. Any investigation must be both commenced promptly and then conducted with expedition. This Committee has stated that that "[c]omplaints [of ill-treatment] must be investigated promptly and impartially by competent authorities so as to make the remedy effective."²⁰⁵ In particular, in relation to ill-treatment of detainees the Committee has reiterated that "the State party is under an obligation to investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment of inmates."²⁰⁶
159. The Committee against Torture has confirmed that promptness relates not only to the time within which an investigation is commenced, but also to the expediency with which an investigation is conducted. A delay of three weeks to launch an investigation into an allegation of torture,²⁰⁷ together with unexplained gaps in the investigation of between one and three months was found to be an unacceptable delay.²⁰⁸ In 2008 the Committee against Torture also noted with regard to

²⁰⁵ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, at para.14.

²⁰⁶ *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, U.N. Doc. CCPR/C/55/D/373/1989, at para. 9.2; *Spence v. Jamaica*, UNHRC, Views of 20 October 1994, UN Doc. CCPR/C/57/D/599/1994, at para. 9; see also UNHRC, *General Comment 20, Article 7*, at para. 14.

²⁰⁷ Fifteen days before the complaint was taken up by a judge and another four days before an inquiry was launched.

²⁰⁸ *Encarnación Blanco Abad v. Spain*, UNCAT, Views of 14 May 1998, U.N. Doc. CAT/C/20/D/59/1996, at para. 8.7.

Kazakhstan that “the lengthy period for preliminary examination of torture complaints, which can last up to two months, may prevent timely documentation of evidence.”²⁰⁹

160. The ECtHR has also provided guidance on the requirements of prompt investigation,²¹⁰ and has considered as relevant the start of the investigation,²¹¹ delays in taking statements,²¹² and the length of time taken during initial investigations.²¹³ The Court has explained that an investigation should be undertaken promptly in order to recover and preserve evidence, including medical evidence and witness statements (when memories are fresh), related to the alleged torture to aid in any potential prosecution of those responsible.²¹⁴
161. In this case, numerous delays and interruptions tainted the investigation. From July 2007 to July 2010, the City Prosecutor repeatedly sought to close the investigation without examining the mistreatment of Mr. Akunov and the responsibility of the officers for causing his death. After the Prosecutor initially refused to investigate the torture of Mr. Akunov, his son (the Author) obtained an order from the City Court to remedy deficiencies in the investigation. However, instead of complying, the City Prosecutor took no investigative actions but instead sought to overturn this order in *ex parte* proceedings. Even when eventually ordered to investigate further by the Prosecutor-General and by the Supreme Court, the City Prosecutor pursued just a month or two of limited actions before repeating the same conclusions. As a result, no action was taken to investigate the torture of Mr. Akunov for five months from 20 July until 20 December 2007, or in almost two and a half years between 15 February 2008 and 10 June 2010.
162. Because of the repeated delays in the investigation, by the time that the Prosecutor-General ordered the investigation be re-opened in June 2010, the witnesses who saw the police beating Mr. Akunov had died, could no longer give detailed testimony because of the passage of time, or were unwilling to cooperate with the investigation (see para. 67, above). As a result, four years after the death of Mr. Akunov, there has been no recognition, explanation, or meaningful accountability for his mistreatment and death in detention.

3. Inadequate Investigation

163. The investigation was not effective because it failed to undertake a number of steps that were essential for an adequate investigation. Even when the courts and the Prosecutor-General ordered the local prosecutor to continue or re-commence the investigation to rectify deficiencies, nothing was done.
164. This Committee has explained that “the State party has a duty to investigate *thoroughly* alleged violations of human rights, particularly enforced disappearances *and violations of the right to*

²⁰⁹ UNCAT, *Concluding Observations on Kazakhstan*, U.N. Doc. CAT/C/KAZ/CO/2, 12 December 2008, at para. 24. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.KAZ.CO.2.doc> (“CAT 2008 Concluding Observations on Kazakhstan”),

²¹⁰ *Bati and Others v. Turkey*, ECtHR Judgment of 3 September 2005, at para. 136 (stating that “[i]t is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context.”); *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 98 (while it is “true that no express provision exists in the Convention as such as can be found in Article 12 of the 1984 United Nations Convention against Torture ... which imposes a duty to proceed to a ‘prompt and impartial’ investigation whenever there is a reasonable ground to believe that an act of torture has been committed ... such a requirement is implicit in the notion of an ‘effective remedy’ under Article 13.”).

²¹¹ *Çiçek v. Turkey*, ECtHR Judgment of 27 February 2001, at para. 149; *Tekin v. Turkey*, ECtHR Judgment of 9 June 1998, at para. 67; *Labita v. Italy*, ECtHR Judgment of 6 April 2000, at para. 133.

²¹² *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998, at para. 103.

²¹³ *Labita v. Italy*, ECtHR Judgment of 6 April 2000, at para. 133-236.

²¹⁴ See e.g. *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998.

life.”²¹⁵ It has also repeatedly held that States Parties must investigate alleged ill-treatment of detainees as expeditiously and thoroughly as possible,²¹⁶ a principle which applies equally to the death of a detainee in custody. This means that the authorities must make a serious attempt to learn what happened: investigations must be thorough in seeking to ascertain the material facts,²¹⁷ “should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions,”²¹⁸ and must take all reasonable steps to secure the evidence concerning the incident.²¹⁹

165. The Minnesota Principles confirm that “there shall be a thorough, prompt and impartial investigation” of a death in custody case, and state that the purpose of the investigation should be to “determine the cause, manner and time of death, the person responsible, and any pattern or practice that may have brought about the death”.²²⁰ The “Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions” (“Minnesota Protocol”) elaborates on the standards for an effective investigation of a death in custody.²²¹ The objectives of an effective investigation include “to recover and preserve evidentiary material related to the death”, “to identify possible witnesses and obtain statements”, to determine the manner of death “as well as any pattern or practice which may have brought about the death”. The procedures required to meet these objectives include (i) full processing of the potential crime scene, including photographing the scene, examination of any blood, examining fingerprints, and recording the identity of those present; (ii) identifying and locating the weapon used; (iii) interviewing family members of the victim, and others who observed the victim and scene in the weeks preceding the death; and (iv) conduct of an independent and thorough autopsy.
166. The ECtHR has also identified a number of steps that state authorities should take in order for an investigation to be effective,²²² including (i) taking the initiative to investigate all the circumstances of the abuse; (ii) taking reasonable steps to “secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence”;²²³ and (iii) “where appropriate, a visit to the scene of the crime.”²²⁴ Another key step is performing a medical examination that fully examines the injuries on a victim’s body, and thus when a death is at issue an effective investigation involves

²¹⁵ *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, at para. 8.8 (emphasis added). See also *Arhuacos v. Colombia*, UNHRC, Views of 19 August 1997, U.N. Doc. CCPR/C/60/D/612/1995, at para. 8.8; and *Bautista v. Colombia*, UNHRC, Views of 13 November 1995, U.N. Doc. CCPR/C/55/D/563/1993, at para. 8.6.

²¹⁶ *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, U.N. Doc. CCPR/C/55/D/373/1989, at para. 9.2; *Irvine Reynolds v. Jamaica*, UNHRC, Views of 3 April 1997, U.N. Doc. CCPR/C/59/D/587/1994, at para. 12.

²¹⁷ *Ristic v. Yugoslavia*, UNCAT, Views of 11 May 2001, Communication no. 113/1998, at para. 9.6 (holding that a proper investigation would have included additional more thorough steps, such as an exhumation and new autopsy).

²¹⁸ *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, at para. 69 (citing *Assenov and Others v. Bulgaria*, ECtHR, Judgment of 28 October 1989, at para. 103).

²¹⁹ *Ibid.*, at para. 69 (citing *Tanrikulu v. Turkey* [GC], ECtHR, Grand Chamber Judgment of 8 July 1999, paras. 104ff and *Gül v. Turkey*, ECtHR, Judgment of 14 December 2000, para. 89).

²²⁰ Minnesota Principles, see note 197 above, at para. 9.

²²¹ The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991) (“Minnesota Protocol”).

²²² *Salman v. Turkey*, ECtHR, Judgment of 27 June 2000, at para. 106 (in the context of a right to life investigation); *Tanrikulu v. Turkey* [GC], ECtHR, Grand Chamber Judgment of 8 July 1999, at para. 109; *Gül v. Turkey*, ECtHR, Judgment of 2002, at para. 89.

²²³ *Paul and Audrey Edwards v. the United Kingdom*, ECtHR, Judgment of 14 March 2002, at para. 71.

²²⁴ *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, ECtHR, Judgment of 27 June 2006, at para. 88.

an autopsy “which provides a complete and accurate record of the possible signs of ill-treatment and injury and an objective analysis of clinical findings, including the cause of death.”²²⁵

167. In this case, the authorities failed to conduct a number of steps which were required for an effective investigation of Mr. Akunov’s torture and death.
168. *Failure to Investigate Scene of Death.* The investigation into Mr. Akunov’s ill-treatment and death was flawed from the outset. At the beginning of the investigation, the police failed to secure the crime scene. The court documents are not even clear about which room Mr. Akunov’s body was in when the physician arrived (see para. 29, above). As a result, the conditions in his cell were not documented and certain key circumstances have not been investigated or explained. The state has ignored the message written in blood in his cell, stating that “this day will pass” (see para. 71, above), and refused to take the message into account despite its obvious relevance to the investigation. Urmatbek Akunov clarified with other detainees that this message was not in the cell before Mr. Akunov was detained, and this message was included in the report of the independent commission on 20 April 2007 (see para. 71, above). However, this message, which suggests that the occupant was bleeding, was being treated poorly, but was determined to outlast his ordeal, is excluded from the official record of the investigation. The state also has not explained which items in his cell he could have knocked himself against while convulsing as he hung himself, as one of the medical reports suggests. A proper record of the crime scene would have made it much easier to establish how Mr. Akunov received his injuries and how he died.
169. *Failure to Adequately Investigate Injuries.* The investigation also failed to adequately account for Mr. Akunov’s injuries. Critically, no explanation has been provided for the brain hemorrhage, which the autopsy attributed to “impact of a hard, dull object” (see para. 33, above).
170. The police do not deny that they beat Mr. Akunov, but they claim that this was a result of his attempting to escape. However, their claims that he resisted being returned to detention could not explain the wide range of injuries which the medical evidence shows Mr. Akunov suffered during his time in police custody. Some abrasions to his fingers, palms or elbows may have resulted from Mr. Akunov’s being forcibly returned to the detention cell. However, the extent of these injuries makes that unlikely. Moreover, other injuries could not be explained in this way, in particular hemorrhaging and swelling in his brain, hemorrhaging in his chest cavity, and multiple linear abrasions near his kidneys. Instead, these injuries are consistent with Mr. Akunov being beaten.
171. The investigation also discounted without reason the testimony of the witnesses who saw the police beating Mr. Akunov. In particular, the investigators failed to investigate the testimony that the police continued to beat or kick Mr. Akunov after he was handcuffed. In part, they base this on the fact that the witnesses did not identify the police officers by name.²²⁶ However, the names of the police officers involved in seizing him were not in dispute, and in any event the family repeatedly named them.
172. Finally, although one medical report speculates that other injuries were suffered when he hung himself, the cell in which Mr. Akunov allegedly hung himself was bare²²⁷ and contained no objects which could account for these injuries being self-inflicted. The suggestion that his injuries resulted from “convulsing” is speculative, has no basis in evidence, and cannot constitute an adequate investigation into his injuries and death.

²²⁵ *Gül v. Turkey*, ECtHR, Judgment of 2002, at para. 89; *Salman v. Turkey*, ECtHR, Judgment of 27 June 2000, at para. 105.

²²⁶ Exhibit 7 – Urmat Akunov, “Objection to the special submission of the prosecutor”.

²²⁷ Exhibit 41 – Conclusion of the Investigation of Bektemir Akunov’s death, 20 April 2007, para. 8.

173. *Failure to Investigate Irregularities in Detention.* The investigation further failed to examine or explain a series of irregularities and failures relating to Mr. Akunov's detention. It never provided an adequate explanation for the irregularities in the registration of his detention such as the lack of any signature or witness (see para. 17, above). The belated change in the basis for Mr. Akunov's detention, which meant that he was detained overnight instead of being released within three hours, was dismissed as a "typo" (see para. 60, above).
174. The investigation never adequately examined or explained the failure of the police to conduct a medical examination of Mr. Akunov, or to inform his family of his detention. The failure to provide a medical examination is particularly concerning, given that the police admit using force against Mr. Akunov, claim that some of his injuries were sustained during this use of force, but then kept him in detention without any medical review. The failure to notify Mr. Akunov's family of his detention was also particularly serious in this case, as noted above, given that his sister lived just a few blocks from the police station, he explicitly asked for her to be notified, and he would have been entitled to be released hours before his death if a family member could have taken him into their personal responsibility (see para. 28, above). Both of these deficiencies were identified by the courts, but were never adequately explained.
175. *Failure to Investigate Fear for Life.* The investigation failed to investigate Mr. Akunov's repeated expressions that he feared for his life in the police station, and what may have caused him to say this. When he was being beaten and returned to the police station, Mr. Akunov repeatedly cried out that the police would kill him, and that he would not leave the police station alive. As noted above, the investigation failed to investigate this consistent testimony of independent witnesses. It also did not examine or explain what caused Mr. Akunov to continue to cry for help throughout the night.
176. *Failure to Investigate Motive for Suicide.* The investigation was inadequate because it failed to examine or explain why he purportedly committed suicide. The mental state of the victim is a critical component of any investigation of an alleged suicide, yet this is absent from the investigation. The investigation never examined the role that Mr. Akunov's mistreatment had on his psychological state, and how this contributed to any suicide. Instead, it simply reported that "hanged himself for unknown reasons and died."²²⁸ It also did not question the apparent inconsistency between Chief Nuraliev presenting Mr. Akunov as calm and repentant when they spoke on the morning of 15 April; but the forensic examination of Mr. Akunov's explanatory statement portraying him as in an abnormal state, likely stressed or agitated.
177. *Official Recognition of Inadequacy.* Many of these inadequacies have been recognized by the Kyrgyz authorities during the investigation but were not remedied. Early in the case, the Naryn City Prosecutor claimed that: "Because it was impossible to collect all the evidence and make a determination on the arguments made in the [Akunov family's] motion, the victim's motion was not addressed, and on July 14, 2007, the criminal case was terminated."²²⁹ Mr. Akunov's family repeatedly asked the Prosecutor to remedy these inadequacies, and even the two accused police officers complained "that the actions of Nuraliev, the Chief, have not been subjected to a legal evaluation, and that the multiplicity of questions raised in their objections have not been addressed."²³⁰
178. The deficiencies were repeatedly criticized by the Prosecutor-General's Office and the courts when sending the case back for further investigation. The Naryn City Court initially "returned [the case] to the prosecutor to the correction of defects" in August 2007; and in April 2008, the City Court

²²⁸ Exhibit 12 – Order denying a motion to reverse the decision to terminate prosecution, 25 February 2008.

²²⁹ Exhibit 8 – Naryn Appeal Court, "Order affirming the Order of 27 August on returning the criminal case to the Prosecutor's Office," 25 September 2007.

²³⁰ *Ibid.*

again recalled that “a lot of defects were permitted during the investigation, and that the criminal case file was returned to the prosecutor to correct these defects.”²³¹ Finally, when ordering once again that the investigation be re-opened in June 2010, the Prosecutor-General stated that the Akunov family:

“provide[d] new circumstances and sufficient evidence proving guilt of the police officers in inflicting battery and bodily injuries to B. Akunov. The investigation and the court did not make any critical evaluation of these facts”²³²

179. However, despite certain limited steps being taken in response, these deficiencies were never remedied in substance. As a result of these inadequacies, the investigation into the torture and death of Mr. Akunov was not effective.

4. Lack of Transparency

180. The investigation into the alleged torture and killing of Mr. Akunov was not conducted with the degree of transparency that is required under international law.
181. For an investigation to be “effective”, international law requires both that the process of the investigation be public and that its results be published. The Istanbul Principles require that “[t]he methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.”²³³ The Committee against Torture has recommended the establishment of a centralised public register of both complaints of torture and ill-treatment and of the results of investigations, to ensure openness and impartiality.²³⁴ It also requires that “every allegation of torture [is] thoroughly investigated and the results made public.”²³⁵ The ECtHR has recognised a similar requirement of public involvement inherent in the obligation to carry out effective investigations, and that the authorities must both grant the family access to the investigation materials as well as its outcome,²³⁶ and publish the findings publically.²³⁷
182. Both the Istanbul and Minnesota Principles recommend that investigations should be carried out by an “independent commission of inquiry or similar procedure”.²³⁸ There should be “wide notice of the establishment of a commission and the subject of the inquiry” so as to allow witnesses to come forward, and that investigation hearings “should be conducted in public, unless in-camera proceedings are necessary to protect the safety of a witness.”²³⁹ The Istanbul Principles requires that the inquiry should issue a written report within a reasonable time that includes “the scope of the

²³¹ Exhibit 13 – Naryn City Court, “Order against Kozhombardiev and Zhunushbaev,” 4 April 2008.

²³² Exhibit 16 – Acting Prosecutor-General, “Resolution on initiation of proceedings due to newly discovered circumstances,” 10 June 2010.

²³³ Istanbul Principles, see note 198 above, at Article 5.

²³⁴ Concluding Observations of the Committee against Torture, U.N. Doc A/56/44, 2001, para. 97(e). The CPT also considers that public authorities should “register all representations which could constitute a complaint.” (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards: “Substantive” sections of the CPT’s General Reports*, p. 88. Available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>).

²³⁵ Committee against Torture, Summary Record of the 245th Meeting, U.N. Doc. CAT/C/SR.245, 11 June 1996, para. 37; see also Nowak and McArthur, *The United Nations Convention against Torture: A Commentary* (Oxford: Oxford University Press, 2008) at 437.

²³⁶ *Chitayev and Chitayev v. Russia*, ECtHR Judgment of 18 January 2007, paras. 165-166; see also *Hugh Jordan v. the United Kingdom*, ECtHR Judgment of 4 May 2001, para. 109, 142 (investigation into a shooting death by a police officer failed to involve “a sufficient element of public scrutiny”); *Finucane v. the United Kingdom*, ECtHR Judgment of 1 July 2003, paras. 61, 71, 82-83.

²³⁷ *McKerr v. United Kingdom*, ECtHR Judgment of 4 May 2001, para. 141.

²³⁸ Istanbul Principles, see note 198 above, Article 5(a); Minnesota Principles, see note 197 above, Article 11.

²³⁹ Istanbul Principles, see note 198 above, Articles 113 and 114.

inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public.”²⁴⁰

183. The investigation of the torture and death of Mr. Akunov has been conducted largely in secret. The nature of the investigation has not been publicized, and no public report has been issued which adequately addresses the allegations that he was tortured by the police, and that the police bear responsibility for causing his death. Indeed, the state has not even publically acknowledged allegations of torture, let alone prepared a public report with a reasoned outcome of the investigation.
184. The failure to publically and officially acknowledge the nature of the allegations and to provide a full public report is particularly striking in this case given its emblematic nature and strong interest of local and international organizations in the investigation. Both the Committee against Torture and the UN Special Representative on the Situation of Human Rights Defenders have requested that the Kyrgyz Republic have requested information on the conduct and outcome of the investigations into the torture and death of Mr. Akunov, but the government has failed to respond (see paras. 72 and 75, above).
185. The criminal investigation has not thus resulted in any meaningful public scrutiny of these events. This failure to publicly recognise the allegations of torture and to publish a full report on the investigation into them renders the investigation ineffective, and it also deprives Mr. Akunov’s family of the right to know the results of the investigation into his torture and death.²⁴¹

5. No Finding of Responsibility

186. The purported investigation into the torture and death of Mr. Akunov has been so hindered by the acts and omissions of the police and prosecutorial authorities that it has not been capable of bringing to justice those responsible.
187. This Committee has explained that “[a]s with the failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant”, and that this is an obligation which applies in particular to violations of Articles 6 and 7.²⁴² The Committee against Torture has confirmed that investigations should seek to ascertain the facts and identify the perpetrators.²⁴³
188. The ECtHR has held that, to satisfy the investigative requirement of the prohibition on torture, an investigation should be capable of leading to the identification and punishment of those responsible and that it “must not be unjustifiably hindered by the acts or omissions of the authorities”.²⁴⁴ The Inter-American Court has also found that the State is under a legal duty “to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victims adequate

²⁴⁰ Istanbul Principles, see note 198 above, Article 5(b).

²⁴¹ This Committee has found that for an investigation to be deemed “effective” it must include some degree of family involvement, which requires at a minimum that family members of the victim must be informed of the outcome of the investigation into the alleged abuses by the state: *El Hassy v. Libyan Arab Jamahiriya*, UNHRC, Views of 24 October 2007, U.N. Doc. CCPR/C/91/D/1422/2005, para. 8.

²⁴² 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.

²⁴³ *Encarnación Blanco Abad v. Spain*, UNCAT, Views of 14 May 1998, U.N. Doc. CAT/C/20/D/59/1996, para. 8.8; *Dzemañl v Yugoslavia*, UNCAT, Views of 21 November 2002, U.N. Doc. CAT/C/29/D/161/2000, para. 9.4.

²⁴⁴ *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 95.

compensation.”²⁴⁵ This duty “requires punishment not only of material authors, but also of the intellectual authors of those acts.”²⁴⁶

189. In this case, the investigation failed to ascertain and attribute criminal responsibility for Mr. Akunov’s torture and death, and was not capable of doing so. The only prosecution was against two low-ranking officers for negligence in failing to keep Mr. Akunov under observation and therefore allowing him a few minutes with which to take his own life. Even these prosecutions resulted in one acquittal, and a suspended sentence for the second accused (see para. 61, above). None of the officers responsible for the initial detention and beating of Mr. Akunov has been held responsible, nor have any officers or other officials in the chain of command, i.e. the intellectual authors of the violations.
190. Limiting the case to one of negligence does not correspond to the reality or the seriousness of the violations committed in this case. As a result, no real perpetrators were brought to justice. Given the delays, deficiencies and bias described above (see paras. 147 to 179, above), this was an investigation which from the outset was never capable or intended to identify the perpetrators or bring them to justice. As a result, four years after the death of Mr. Akunov, there has been no accountability for his mistreatment in detention, and the so-called accountability for his death is limited to one suspended sentence for an officer who purportedly gave him the opportunity to take his own life. Such an investigation cannot be considered as effective.

E. Failure to Provide Redress: Articles 6(1) and 7 with Article 2(3)

191. International law requires access to legal remedies for torture and deaths in custody, including compensation. However, the minor compensation which has been awarded in this case does not constitute meaningful redress for torture and violation of the right to life, and the law in the Kyrgyz Republic effectively prohibits Mr. Akunov’s family from pursuing further civil remedies given the failed investigation.
192. Article 2(3) 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.²⁴⁷ This Committee has stated that “States may not deprive individuals of the right to an effective remedy, including compensation.”²⁴⁸ It has explained that the nature of the remedy – whether judicial, administrative or other – should be in accordance with the rights violated and the effectiveness of that remedy in granting appropriate relief for the violation.²⁴⁹ The Committee against Torture has also stated that the 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.²⁵⁰ The ECHR considers whether an award of damages or

²⁴⁵ *Velásquez-Rodríguez v. Honduras*, IACtHR, Judgment of 29 July 1988, at para. 174.

²⁴⁶ *Corumbiara Massacre v. Brazil*, IACCommHR, Case 11.566, Report No. 32/04, at para. 256.

²⁴⁷ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

²⁴⁸ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 15.

²⁴⁹ UNHRC, Concluding Observations on Finland, U.N. Doc. CCPR/C/79/Add.91, 4 August 1998, para. 10. See e.g. *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, U.N. Doc. CCPR/C/60/D/612/1995, at para. 5.2; *de Arellana v Colombia*, UNHRC, Views of 27 October 1995, U.N. Doc. CCPR/C/55/D/563/1993, at para. 8.2.

²⁵⁰ UNCAT, Summary Record of the 109th meeting, U.N. Doc. CAT/C/SR.109, para. 27; UNCAT, Report of the Committee against Torture, 1992, U.N. Doc. A/47/44, para. 337.

redress is adequate, and whether is sufficiently takes into account the severity of the ill-treatment, as “an important indicator for assessing whether a breach of the Convention has been redressed”.²⁵¹

193. As part of the general right of access to a court, the ECtHR has found that the duty to provide effective remedies to victims of ill-treatment includes compensation.²⁵² Similarly, the Inter-American Court has established that for remedies to be effective, they must be suitable to address the legal right that has been infringed.²⁵³ Following this reasoning, the Inter-American Commission on Human Rights explained that torture and similar crimes are of such gravity that they require specific measures.²⁵⁴
194. In the Kyrgyz Republic, a civil claim can only succeed against state agents if there has been a conviction. As the Joint UPR Submission of a group of leading anti-torture NGOs in the Kyrgyz Republic noted, “Kyrgyz law does not allow victims of torture to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture [...] and] since the criminalization of torture in 2003, no victim of torture had received monetary compensation”²⁵⁵ (see para. 86, above).
195. In this case, after a series of unsuccessful attempts to initiate criminal proceedings against the police officers involved in his father’s death, Urmatbek Akunov filed a civil claim on 25 June 2008. In December 2009, two and a half years after Mr. Akunov’s death, the court awarded a small sum for moral damages based solely on the negligence of the police officers; the court also awarded financial damages, but the Ministry of Internal Affairs appealed against this and the award was reduced to 27,967 soms (approx. \$600 USD). The family also received limited compensation from a presidential fund for the university fees of Mr. Akunov’s daughter and for his younger son, totaling 65,000 soms (approx.. \$1,400 USD; see paras. 62 to 64, above).²⁵⁶
196. This compensation is inadequate in light of the emotional and financial hardship suffered by Mr. Akunov’s family following his death. In addition, none of this compensation relates to the torture of Mr. Akunov. The award fails to recognize or remedy the serious violations of rights inflicted upon Mr. Akunov while he was in custody. Such civil measures cannot be considered an effective remedy for grave violations such as torture and violation of the right to life, especially given the continued denial of responsibility for the torture, claim that the death was suicide, and limitation of state responsibility to mere negligence.
197. Mr. Akunov’s family has made strenuous efforts to have the torture of Mr. Akunov in police custody and his subsequent death properly investigated and brought before the courts. Despite all those efforts there has been no real attempt to investigate the criminal liability of those who mistreated him and are responsible for this death, making any further civil claim for the torture and death in custody impossible.
198. Mr. Akunov’s family have received no redress for his torture; rather, their calls for investigation and compensation have been met with consistent assertions that the police did nothing wrong

²⁵¹ See e.g. *Shiskin v Russia*, ECtHR Judgment of 7 July 2011, paras. 105-109. See also *Breabin v. Moldova*, ECtHR, Judgment of 7 July 2009, where the assessment that domestic courts’ judgments resulted in a “manifestly inadequate amount” of non-pecuniary damages awarded (for torture) meant that the applicant was not required to exhaust that domestic remedy for purposes of admissibility (at para. 35).

²⁵² *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 90; *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998, at para 117.

²⁵³ *Velasquez Rodriguez v Honduras*, IACtHR, Judgment of 29 July 1988, at para. 64.

²⁵⁴ *Catalán Lincoledo v. Chile*, IACommHR, Report No. 61/01 of 16 April 2001, at para. 36. Available at: <http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Chile11.771.htm>.

²⁵⁵ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para. 28.

²⁵⁶ Exhibit 24 – Statement of Urmatbek Akunov, 22 September 2011, para. 21.

except for leaving Mr. Akunov unsupervised for a few minutes. In light of the inadequate sum of and the basis on which the state awarded it, Mr. Akunov's family have been denied redress.

F. Arbitrary detention and Freedom of Expression – Articles 9(1) and 19

199. Finally, Mr. Akunov was detained, and was subsequently beaten and ultimately died, in response to his political and civic activism. His detention was aimed at retaliating against and silencing a critical voice, rather than for any legitimate purpose, and was therefore arbitrary. The arbitrary detention, together with his torture and death, also violates his right to freedom of expression, a particularly important right for civil society activists.
200. This Committee has repeatedly held that the detention of a person as a result of their political views is arbitrary.²⁵⁷ Even if an arrest is formally carried out in compliance with domestic law, where that arrest and detention is aimed at silencing an advocate for greater democracy and accountability rather than pursuing a legitimate aim such as preventing a suspect from fleeing, interfering with evidence or continuing to commit crimes.²⁵⁸
201. The ECtHR has also condemned detention which was used partly for the purpose of silencing political opposition, finding a violation of Article 5 of the ECHR (right to liberty and security), on the basis that the detention of the owner of an opposition media group was “applied not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, but also for other reasons.”²⁵⁹
202. In addition, 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”. This Committee has found that “the right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by Article 19 of the Covenant.”²⁶⁰ It has also “expressed concerns “about attacks against journalists as well as unionists and the lack of protection afforded to them, which restricts the enjoyment of the rights of expression and association provided for in articles 19 and 22 of the Covenant.”²⁶¹ Numerous Committee cases have confirmed that protected expression includes political expression.²⁶² This Committee recently found a violation of the Article 19 in *Umarov v Uzbekistan* where the applicant was arrested and convicted in an attempt to prevent him from expressing his political views.²⁶³
203. The Inter-American Commission has recognized that harassment and intimidation tactics against “social communicators,” violate the right to freedom of expression.²⁶⁴ Such tactics obstruct the

²⁵⁷ *Jaona v Madagascar*, UNHRC, Views of 1 April 1985, U.N. Doc. Supp. No. 40 (A/40/40) at 179, para. 14-16; *Blanco v Nicaragua*, UNHRC, Views of 20 July 1994, U.N. Doc. CCPR/C/51/D/328/1988, para. 10.3. See generally Nowak, *CCPR Commentary (2nd revised edition)* (2005), p. 227.

²⁵⁸ *Mukong v Cameroon*, UNHRC, Views of 10 August 1994, U.N. Doc. CCPR/C/51/D/458/1991, paras. 2.1, 9.8.

²⁵⁹ *Gusinskiy v Russia*, ECtHR, Judgment of 19 May 2004, para. 77; see also paras. 62-78.

²⁶⁰ *Kivenmaa v. Finland*, UNHRC, Decision of 31 March 1994, UN Doc. CCPR/C/50/D/412/1990, at para. 9.3.

²⁶¹ UNHRC, Concluding Observations, Argentina, U.N. Doc. CCPR/C/79/Add.46 (1995), para. 12.

²⁶² See *Nqalula Mpandanjila et al. v. Zaire*, UNHRC, Decision of 26 March 1986, Communication No. 138/1983; *Kalenga v. Zambia*, UNHRC, Decision of 26 March 1986, Communication No 326/1988; *Jaona v. Madagascar*, UNHRC, Decision of 1 April 1985, Communication No. 132/1982; and *Aduayom et al. v. Togo*, UNHRC, Decision of 12 July 1996, Communications Nos. 422/1990, 423/1990 and 424/1990.

²⁶³ *Umarov v Uzbekistan*, UNHRC, Decision of 19 October 2010, UN Doc. CCPR/C/100/D/1449/2006.

²⁶⁴ Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, Declaration of Principles on Freedom of Expression, Principle 9 (Oct. 2000), Principle 9. Available at <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>

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.²⁶⁵ Furthermore, while the murder of or attack on a journalist, unionist or other activist can be a violation of their freedom of expression, and can also have a “chilling effect” on others, the failure to effectively investigate that murder can also have a similar chilling effect.²⁶⁶

204. The circumstances of this case demonstrate that Mr. Akunov was targeted because of his civic activism. Mr. Akunov was a well-known local activist who raised issues which were unpleasant for the government. Shortly before his death he had participated in hunger strikes and protests in Bishkek, and upon his return to Naryn he went to see the mayor to request a meeting with him to discuss publicizing these developments. He was arrested while trying to meet with the mayor, and as a result of doing so. The precise basis for this arrest is unclear – some documents claim that he was intoxicated, others that he was disorderly and swearing. But as Mr. Akunov’s lawyer showed, there are a number of inconsistencies in the various statements relating to the basis of his initial arrest; and some of the witnesses who are listed as substantiating it later admit to not having seen Mr. Akunov that night (see para. 58, above). As Urmatbek Akunov pointed out, Mr. Akunov had no reason to be disorderly at the city hall as this would have been counter-productive given that he was trying to enlist the assistance of the mayor.²⁶⁷ The inconsistencies in the evidence which the police claim justified their detention of Mr. Akunov raise additional concerns that he was detained for political reasons.
205. Mr. Akunov’s detention, beating and death must be seen in the context of the political repression in the Kyrgyz Republic in 2007, which confirms that it was linked with his political and civic activism. As set out in paragraphs 88 to 90 above, a range of civil society activists, especially those involved in the opposition activities, were targeted by the Kyrgyz government in 2007 in a sweep of arbitrary arrests followed by politically motivated charges. In particular, following the protests of April 2007, at around the same time that Mr. Akunov was detained, other participants of the United Front and similar civic movements were arrested on similar charges (such as hooliganism). Many local human rights organizations consider Mr. Akunov’s death to be emblematic of the new wave of the repression against political and civic activism and expression of views critical of the government.
206. Several international human rights organizations have also recognized the political dimension of Mr. Akunov’s torture and death. The UN Special Representative on the Situation of Human Rights Defenders expressed concern over the detention and death of Mr. Akunov, stating that he “was reportedly arrested for his alleged involvement in persuading heads of local authorities to move to the opposition side”, and reporting that his body “showed signs of a brutal beating”.²⁶⁸ Mr. Akunov’s case was also included in the OSCE report on Human Rights Defenders in the OSCE Region.²⁶⁹ The U.S. State Department also reported Mr. Akunov’s death in the context of his participation in opposition-led demonstrations in its 2008 Human Rights Report.²⁷⁰

²⁶⁵ *Hector Felix Miranda v. Mexico*, IACommHR, Report No. 50/99 of 13 April 1999, at para. 52.

²⁶⁶ *Manoel Leal de Oliveira v. Brazil*, IACommHR, Report No. 37/10 of 17 March 2010, at paras. 104-105; see generally paras. 91-107, *Hector Felix Miranda v. Mexico*, IACommHR, Report No. 50/99 of 13 April 1999, para. 52; and *Victor Manuel Orepeza v. Mexico*, IACommHR, Report No. 130/99 of November 19, 1999, para. 58.

²⁶⁷ Exhibit 2 – Complaint to Naryn City Prosecutor by Urmat Akunov, 16 July 2007.

²⁶⁸ Human Rights Council, “Report of Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani,” Seventh Session, U.N. Doc A/HRC/7/28/Add.1, 5 March 2008, paras. 1268-1270.

²⁶⁹ OSCE, *Human Rights Defenders in the OSCE Region: challenges and good practices, April 2007 – April 2008*, p. 12.

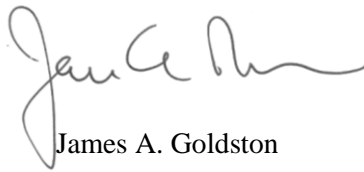
²⁷⁰ Exhibit 51 – United States, of America, Department of State, 2008 Human Rights Report: Kyrgyz Republic. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119136.htm>.

207. In addition to the fact that Mr. Akunov's detention was arbitrary, as it was motivated by his political and civic activism and expression rather than for any legitimate purpose, his detention also violated a series of domestic legal standards. As noted above, the registration of his detention lacked any signature or witness (see para. 17, above); the basis his detention was belatedly changed, meaning that he was detained overnight instead of being released within three hours, and this change was dismissed as a "typo" (see para. 60, above); and his family was never notified of his detention, depriving his of an opportunity to be released (see para. 28, above). These constitute a further violation of the requirement of the Article 9 (1) that any detention should be lawful.
208. Given the link between Mr. Akunov's political and civic activism and his initial detention, and the fact that he was detained in the context of a broader crackdown on activists who were affiliated with the protests that he had attended in the weeks before his detention, that detention and his subsequent torture and death were aimed at preventing him from expressing his political views. The Kyrgyz Republic is therefore also responsible for arbitrary detention of Mr. Akunov in violation of Article 9(1) and violation of his freedom of expression under Article 19 of the ICCPR.

IX. REMEDIES

209. The Author requests the Committee to:
- a) make a finding that the Kyrgyz Republic is responsible for the death and for the torture, or the inhuman and degrading treatment, of Bektemir Akunov, under Articles 6(1) and 7 of the ICCPR;
 - b) make a finding that the Kyrgyz Republic has violated its obligations to establish safeguards against torture and arbitrary killings, to investigate the torture and death of Mr. Akunov, and to provide an effective remedy, under Articles 6(1), 7, and 2(3) of the ICCPR;
 - c) make a finding that the Kyrgyz Republic is also responsible for arbitrary detention of Mr. Akunov in violation of Article 9(1) of the ICCPR and for violating his freedom of expression under Article 19 of the ICCPR, as it detained Mr. Akunov in retaliation for his expression of his political and civic views and his detention did not pursue legitimate aims;
 - d) urge the Kyrgyz Republic to acknowledge the arbitrary nature of Mr. Akunov's detention and the role of the state in his torture and death, to publish the decision of the Committee, and to issue a public apology to the family of Mr. Akunov for the violations of his rights;
 - e) urge the Kyrgyz Republic to create an independent commission of inquiry to investigate the circumstances of the detention, torture and death of Mr. Akunov; such a commission of inquiry should not be limited to members of the prosecutor's office and/or the ministry of interior but include independent actors, and should have the power to initiate a criminal prosecution of those found to be the material and intellectual authors of his death;
 - f) urge the Kyrgyz Republic to pay just financial compensation to the family for the torture and unlawful death of Mr. Akunov;
 - g) urge the Kyrgyz Republic to provide appropriate training for judges, prosecutors, lawyers and law enforcement officers on the rights of detainees, the prohibition of torture and ill-treatment, and the prohibition of retaliation against those who engage in civic or political activism or express views contrary to or critical of the government;

- h) urge the Kyrgyz Republic to introduce safeguards to prevent similar violations from happening in the future, including the creation of an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and domestic legislation; to ensure registration of all detainees from the moment of detention and proper monitoring of the detention facilities; to ensure prompt and regular medical examinations in detention; to ensure prompt notification of family members and allow visits by family members and lawyers to those in police detention; and also to protect the freedom of expression, including of political views.



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LIST OF SUPPORTING DOCUMENTS

Prosecution Documents

- Exhibit 1 Naryn Prosecutor Office, “Resolution on several facts related to reducing criminal proceedings against a group of individuals,” 14 July 2007 (“Resolution reducing criminal proceedings with respect to Akunov’s death, 14 July 2007”) (English only)
- Exhibit 2 Urmatbek Akunov, “Petition to the Acting Prosecutor of the City of Naryn, A. Dzhoozbekov,” 16 July 2007 (“Complaint to Naryn City Prosecutor by Urmat Akunov, 16 July 2007”) (English, Russian)
- Exhibit 3 Naryn City Prosecution Office, “Determination regarding the conclusion of investigation of the death of Bektemir Akunov,” 16 July 2007 (English, Russian)
- Exhibit 4 Naryn Region Public Prosecutor’s Office, “Response to Urmat Akunov’s petition of a criminal case against the Naryn City Department of Internal Affairs,” 20 July 2007 (English, Russian)
- Exhibit 5 Urmatbek Akunov, “Motion to the Naryn City Court to stay the hearing of the criminal case and to return the case to the prosecutor to rectify omissions in the investigation,” 24 August 2007 (“Motion to the Naryn City Court to return the criminal case to the Prosecutor’s Office, 24 August 2007”) (English, Russian)
- Exhibit 6 Decision of Naryn City Court, 27 August 2007 (English, Kyrgyz)
- Exhibit 7 Urmatbek Akunov, “Objection to the special submission of the prosecutor,” undated (English, Russian)
- Exhibit 8 Naryn Appeal Court, “Order affirming the Order of 27 August on returning the criminal case to the Prosecutor’s Office,” 25 September 2007 (English, Russian)
- Exhibit 9 Resolution of Judicial Panel on Criminal Cases and Administrative Offences of the Supreme Court of the Kyrgyz Republic, 20 December 2007 (English, Russian and Kyrgyz)
- Exhibit 10 Naryn City Prosecution Office, “Decision to terminate judicial prosecution with regard to the detention of B. Akunov at the Naryn City Department of Internal Affairs for violation of administrative rights,” 15 February 2008 (“Decision terminating judicial prosecution regarding detention of B. Akunov, 15 February 2008”) (English, Russian)
- Exhibit 11 Kanat Dzhailoyev, Urmatbek Akunov’s lawyer, “Complaint against the Naryn City Prosecutorial Investigator’s decision not to prosecute the criminal case,” 25 February 2008 (English, Russian)
- Exhibit 12 Prosecutor for Naryn City, M. Akmataliyev, “Order denying a motion from K. Dzhailoyev, attorney for victim U. Akmatov to reverse Naryn City Public Prosecution Officer decision to terminate prosecution,” 25 February 2008 (“Order denying a motion to reverse the decision to terminate prosecution, 25 February 2008”) (English, Russian)
- Exhibit 13 Naryn City Court, “Order against Kozhombardiev and Zhunushbaev,” 4 April 2008 (English, Russian)
- Exhibit 14 Naryn Appeal Court, “Order affirming the Naryn City Court ruling,” 7 May 2008 (English, Russian)

- Exhibit 15 Decision of the Judicial Board on Criminal Cases and Administrative Offences of the Supreme Court of the Kyrgyz Republic, 2 September 2008 (English, Russian)
- Exhibit 16 Acting Prosecutor-General, “Resolution on initiation of proceedings due to newly discovered circumstances,” 10 June 2010 (English, Russian)
- Exhibit 17(a) Naryn Oblast Prosecutor’s Office, “Decision on acceptance of inspection of newly discovered evidence in production,” 18 June 2010 (English, Russian)
- Exhibit 17(b) Record of Questioning of Asanaliev, 23 June 2010 (English, Russian)
- Exhibit 18 Conclusion of Naryn Region Prosecutor, 17 July 2010 (English, Russian)
- Exhibit 19 Decision of the Supreme Court of the Kyrgyz Republic, 7 October 2010 (English, Kyrgyz)

Witness Statements

- Exhibit 20 Bazarkul Asanbekova, “Explanatory statement to Attorney Dzhayloev,” 7 May 2007 (“Statement of Asanbekova, 7 May 2007”) (English, Russian)
- Exhibit 21 Aynura Sarymsakova, “Explanatory statement to Attorney Dzhayloev” (Statement of Sarymsakova”) (English, Russian)
- Exhibit 22 Askar Chorgobaevich Eshimkanov, “Explanatory statement to Attorney Dzhayloev” (“Statement of Eshimkanov”) (English, Russian)
- Exhibit 23 Kulumkul Kanaeva, “Explanatory statement to Attorney Dzhayloev” (“Statement of Kanaeva”) (English, Russian)
- Exhibit 24 Statement of Urmatbek Akunov, 22 September 2011

Forensic Documents

- Exhibit 25 Forensic Medicine Expert Board, “Report No. 11 of the forensic assessment of Bektemir Akunov,” 15 April 2007 (English, Russian)
- Exhibit 26 Attorney Kanat Dzhailoyev, “Petition No. 1, to conduct a collegial forensic pathological examination of Akunov’s body,” 26 May 2007 (English, Russian)
- Exhibit 27 Bureau of Forensic-Medical Examination, “Conclusion No. 112 (examination of the criminal case),” 5 July 2007 (English, Russian)
- Exhibit 28 Attorney Kanat Dzhailoyev, “Petition No. 2, to conduct a forensic handwriting examination,” 25 May 2007 (English, Russian)
- Exhibit 29 State Center of Forensic Examination of the Ministry of Justice, “Forensic pathologist report No. 5801/01,” 12 June 2007 (English, Russian)
- Exhibit 30 Attorney Kanat Djailoiev, “Petition No. 3, to conduct forensic examination of materials (fabric and fibers of pants, socks and shoes),” 26 May 2007 (English, Russian)
- Exhibit 31 State Center of Forensic Examination of the Ministry of Justice, “Forensic expert opinion No. 5836/10,” 8 June 2007 (English, Russian)
- Exhibit 32 State Center of Forensic Examination of the Ministry of Justice, “Forensic expert opinion No. 5797/03,” 11 June 2007 (English, Russian)
- Exhibit 33 Attorney Kanat Djailoiev, “Petition No. 4, to conduct an investigative experiment,” 26 May 2007 (English, Russian)
- Exhibit 34 “Record of the reconstruction of events and an experiment in criminal case 160-07-96,” 7 June 2007 (English, Russian)

Civil Claims

- Exhibit 35 Urmatbek Akunov, “Claim for financial damages and compensation for pain and suffering caused by the crime,” filed before the Pervomaisky District Court in Bishkek, 24 June 2008 (English, Russian)
- Exhibit 36 Pervomaisky District Court of the City of Bishkek, “Order on U. Akunov’s claim for compensation,” 27 June 2008 (English, Russian)
- Exhibit 37 Decision of the Pervomaisky District Court of the City of Bishkek, 2 December 2008 (English, Russian)
- Exhibit 38 Decision of the Judicial Board on Civil Cases, City of Bishkek, 19 March 2009 (English, Russian)

Reports on Death of Mr. Akunov

- Exhibit 39 Kyrgyz Committee for Human Rights, “Circumstances of death of the participant of political hunger-strike Bektemir Akunov,” 17 April 2007
- Exhibit 40 24.kg News Agency, “Recently died hunger-striker severely beaten up,” 17 April, 2007. Available at: <http://eng.24.kg/community/2007/04/17/1851.html>
- Exhibit 41 Conclusion of the Independent Commission on the “Investigation of the causes of Bektemir Akunov’s death,” 20 April 2007 (“Conclusion of the Investigation of Bektemir Akunov’s death, 20 April 2007”) (English, Russian)
- Exhibit 42 World Organization Against Torture (OMCT), “Kyrgyzstan: Arbitrary arrest, alleged ill-treatment and death of Mr. Bektemir Akunov,” KGZ 250407. Available at: <http://www.omct.org/urgent-campaigns/urgent-interventions/kyrgyzstan/2007/04/d18607/>
- Exhibit 43 Kyrgyz Committee for Human Rights, “The Central Bank of Russia goes on a trace of financial activity of younger Bakiev,” 24 May 2007. Available at: <http://www.kchr.org/105-May-2007/e20070524.html>
- Exhibit 44 The Golos Svobody (Bishkek), Spravedlivost (Jalal-Abad) and Advocacy Center on Human Rights (Osh), *Joint Submission to the UN Universal Periodic Review of Kyrgyzstan*, 8th Session, 3-14 May 2010. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS4_GS_UPR_KGZ_S08_2010_TheGolosSvobody.pdf

Media

- Exhibit 45 U.S. Bureau of Democracy, Human Rights, and Labor, *Country Report on Human Rights Practices, Kyrgyz Republic*, 2005. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61657.htm>
- Exhibit 46 Human Rights Watch, *World Report 2006, “Kyrgyzstan”*. Available at: <http://www.hrw.org/legacy/wr2k6/wr2006.pdf>
- Exhibit 47 Radio Free Europe Radio Liberty, “Kyrgyzstan: Thousands Demand President's Resignation,” 11 April 2007. Available at: <http://www.rferl.org/content/article/1075803.html>
- Exhibit 48 Radio Free Europe Radio Liberty, “Kyrgyz parliament confirms constitutional nominees,” 20 April 2007. Available at: <http://www.rferl.org/content/article/1143856.html>

- Exhibit 49 International Helsinki for Human Rights, “Kyrgyzstan: Cases of death under torture mounting in the City of Naryn,” 22 August 2007. Available at: http://www.hrea.org/lists2/display.php?language_id=1&id=5603
- Exhibit 50 Radio Free Europe Radio Liberty, “Rights Groups Sound Alarm over Torture Deaths,” 23 August 2007. Available at: <http://www.rferl.org/content/article/1078309.html>
- Exhibit 51 United States of America, Department of State, 2008 Human Rights Report: Kyrgyz Republic. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119136.htm>
- Exhibit 52 Human Rights Watch, *World Report 2008, “Kyrgyzstan: Events of 2007”*. Available at: <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/kyrgyz17745.htm>
- Exhibit 53 International Crisis Group, Kyrgyzstan: the challenge of judicial reform, Asia Report N°150 – 10 April 2008. Available at: http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/150_kyrgyzstan_the_challenge_of_judicial_reform.pdf
- Exhibit 54 International Center for Transitional Justice, “Assessing a Transitional Justice Approach for Kyrgyzstan,” August 2010. Available at: <http://ictj.org/sites/default/files/ICTJ-Kyrgyzstan-TJ-2010-English.pdf>
- Exhibit 55 Human Rights Watch, *World Report 2010, “Kyrgyzstan”*. Available at: <http://www.hrw.org/en/node/87615>