



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2479/2014***,**

<i>Communication submitted by:</i>	H. R. (represented by the Open Society Justice Initiative and Mutabar Tadjibayeva of the Fiery Hearts Club)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	23 May 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 November 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	16 March 2021
<i>Subject matter:</i>	Arbitrary detention and torture by the police and the security service; indiscriminate use of lethal force against demonstrators; forced displacement
<i>Procedural issue:</i>	Exhaustion of domestic remedies; abuse of the right of submission
<i>Substantive issue:</i>	Torture, cruel, inhuman and degrading treatment; arbitrary detention; right to life; expulsion from one's own country; effective remedy
<i>Articles of the Covenant:</i>	6; 7 in conjunction with 2 (2); 9; 12 (1) and (4); 2 (3) in conjunction with 6, 7, 9 and 12
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is H. R., an Uzbek national born in 1973. At the time of the submission, he was residing as a refugee in the Netherlands. He claims to be a victim of a violation by the State party of articles 6; 7 read in conjunction with article 2 (2); 9 (1); 12 (1); 12 (4); and article 2 (3) read in conjunction with articles 6, 7, 9 and 12. The

* Adopted by the Committee at its 131st session (1-26 March 2021).

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*** Individual opinion by Committee members Hélène Tigroudja and Arif Bulkan (dissenting) is annexed to the present Decision.



Optional Protocol entered into force for the State party on 28 December 1995. The author is represented by a counsel.

The facts as presented by the author

2.1 The author was a businessman in Andijan, Uzbekistan. He fled the country after participating in a demonstration on 13 May 2005. Prior to that and for over a year, he had been periodically detained, interrogated, beaten and threatened by the National Security Service (SNB) and the police Criminal Investigations Department (CID) in an attempt to coerce him into providing false evidence against 23 prominent businessmen.

2.2 On 11 April 2003, the author was summoned to a military commissariat in order to be evaluated for military reserves. On arrival, he was forced into a car, where four men punched him in the stomach, had his head forced down between the front seats and threatened that “he would regret having been born”. He was brought to an SNB building, taken into a room with no furniture, beaten and struck in the face by four men. Once he fell to the ground, he was kicked all over the body, sparing only his head and face. He was told that the SNB reported to the President and that the authorities had decided to “shut down his charitable activities”. He was forced to sign a blank sheet of paper, then allowed to go out for lunch but was informed that if he did not return he would be charged under articles 159 and 244 of the Criminal Code for an attempt to overthrow the constitutional order and for religious extremism. When he returned, he was accused of religious extremism and was instructed to return for further interrogations every other day from 12:00 pm to 1:00 pm. His detention was not registered. He was instructed not to tell anyone about it, was not provided with any detention record or information about his rights, including the right to a lawyer. When he returned to the SNB the following day, he was shown the paper he had signed. It stated that he was undertaking an obligation to continue to meet the SNB and that if he informed anyone, he would thereby accept his guilt under articles 159 and 244 of the Criminal Code. He was told that people condemned under these provisions never returned alive from prison and that if he failed to appear upon the SNB’s request, a criminal case would be opened against him.

2.3 During three months, the author was repeatedly summoned by the SNB, which occasionally called or sent an agent to his home and office. During the first one and a half months, he was interrogated every other day. Later, he was summoned sometimes twice a week, sometimes once every two weeks. When he went to the SNB building, he had to crawl under a grid at the backyard and was taken into a room with barred windows. On each occasion, he spent between two and five hours in the SNB building. He was often not asked anything or was asked senseless questions like what cigarettes he preferred. On five or six occasions, he was asked to appear late at night in abandoned places but he did not go. The following day, he would be summoned by the SNB. He was told he was summoned by an order of the President and that no one would be able to defend him. He was pressed to become an informant on wealthy businessmen in Andijan. One of the SNB officers offered him help for US \$5,000 but the author said he did not have the money. In August 2003, the SNB ceased to contact him but he felt he was being watched and lived in constant fear.

2.4 After December 2003, the author was called by the police CID for interrogation five times. He was threatened and verbally abused. On two occasions, he was beaten, pinned against a wall, slapped, punched in the stomach and kicked in the ribs. No record was made of his detentions. He was never informed of his right to counsel or any other right. He was told that if he died, no one would know about it.

2.5 On 7 May 2004, the head of the CID came to the author’s office and instructed him to follow him into a minivan with other CID and SNB officers. In the minivan, one of the officers said to the author he would have to “pay for refusing cooperation”. The author was taken to the district police department, where he was slapped and asked to write a statement that he was not connected to extremist or religious organizations. Five minutes after he was released, a woman approached him asking for tobacco. He was again stopped by a policeman, who asked him to return to the police department. Back in the police department, he met the same woman, who accused the author of having forcibly taken her in his arms and kissed her. The police recorded this statement without questioning. The author was detained on the basis of article 183 of the Administrative Liability Code for offending the woman. At 7.10 pm, the author was placed in a detention cell measuring one by one-and-a-half meters. He was held

there overnight without access to toilet, water or food and without being allowed to call his lawyer or family. The cell had concrete walls and a stone door smeared with blood. There was a bench but he found it impossible to lie down. After four hours, another man, who the author believes was a government agent, was placed in the cell with him. On 8 May 2004, at 10.00 am, the author was taken to the basement, where he met six other men. He recognized two CID officers and two SBN officers. They asked him to give evidence against his business partners promising him an apartment, two shops and a car. When he refused, they threatened to plant evidence of crimes in his house, have him arrested or have him raped with a truncheon. An SNB agent hit the author several times on the back of his head, trying to force him to sign a blank sheet of paper. Then the author was locked to the chair with handcuffs and his arms crossed, was dragged by his hair and beaten all over his body, face, head and neck, first with fists, then with truncheons, until he lost consciousness.

2.6 The SNB officers called an ambulance and the author was placed in the urgent ambulance aid service branch of the Izboskan District Central Hospital, where he stayed from 8 to 17 May 2004.¹ He regained consciousness four and a half days after his admittance to the hospital. He was later treated in the neurology branch from 17 to 29 May 2004 and again from 5 to 12 June 2004.² Despite repeated requests by the author's family, his forensic medical examination was not conducted until 16 days after his torture. The examination was carried out with SNB officials present in the building and consisted of a quick visual check. The author was not provided with a copy of the results of the examination. The author and his family's requests for an alternative examination were not granted.³ Following their complaints, the head of the hospital insisted that the author leave the hospital. The author's mother-in-law overheard SNB officers forcing the senior doctor to dispatch the author, despite his asserting that the author's health was poor. The author continued suffering from extremely painful headaches and required ongoing treatment at the neurology department. In the following year, he was admitted to the Andijan city clinic around 6 times.

2.7 The author and his family complained about his torture and arbitrary detention by the police and the SNB on 7-8 May 2004 to district-, regional- and national-level prosecutors, providing medical evidence and the identities of the perpetrators. The Izboskan district Prosecutor's Office established that the author was detained on 7 May by police and SNB officers. However, a criminal investigation was denied based on the lack of indication of bruises in a medical examination report of 25 May 2004. The author and his family also complained to the President of the Republic of Uzbekistan and to the media.

2.8 In June 2004, the author was charged with an administrative offence for insulting the woman on 7 May 2004. On 9 July 2004, the Izboskan District Court of Criminal Affairs dismissed the charges due to lack of proper registration of the alleged victim's complaint and inconsistencies in her statements.⁴ In August 2004, the author filed a civil claim seeking compensation for damage to his life and health resulting from his unlawful detention and

¹ Statement of Dr. K., dated 16 June 2004, according to which, on 8 May 2004, she received a call from the SNB asking her to come urgently, she found a patient in a state of acute stress reaction and transported him to the Central Hospital for emergency care; Decision on denial of opening criminal proceedings by the Izboskan District Prosecutor's Office, dated 31 May 2004, referring to a letter by Dr. U., who stated that the unconscious author was brought to the Central Hospital in a state of "stress" on 8 May by an SNB officer. The author was diagnosed with "hysterical neurosis". In the morning, he regained consciousness and said he had been beaten by police officers. See also a letter, dated 27 May 2004, in which the author's mother-in-law describes how she found him "half alive" in the ambulance center with red swelling spots on his back and how he regained consciousness only three days after. [The translation contains an additional statement according to which on 11 May, a video cassette recording the author's condition in the ambulance center was taken by International Affairs Department officers. The original of this statement seems to be missing.]

² Letter of the author's lawyer, dated 27 May 2004, to the chief doctor of the Izboskan District Central Hospital, requesting documents about the author's treatment and diagnosis. Letter from the Health Ministry, dated 15 July 2004, stating that the author was treated in the urgent ambulance aid service of the Central Hospital from 8 to 17 May, in the neurology branch from 17 to 29 May and from 5 to 12 June 2004. The author also provides untranslated hospital records.

³ Letter by the author's lawyer, to the Izboskan District Prosecutor's Office, dated 21 May 2004, requesting a commission expertise and interrogation of witnesses.

⁴ Izboskan District Court of Criminal Affairs, decision of 9 June 2004.

beating by the police on 7-8 May 2004.⁵ His lawyer was afraid of complaining against the SNB. The author was informed that the prosecutor had filed a notice of opposition to the 9 July 2004 decision by the Izboskan District Court of Criminal Affairs. The author and his lawyer had never received a copy of the prosecutor's appeal and suspect that it was filed after the prescribed time limits and after the author's compensation claim. On 16 September 2004, the Andijan Regional Court reversed the 9 June 2004 decision by the Izboskan District Court of Criminal Affairs ordering further investigation.⁶ By a court order of 7 October 2004, not notified to the author, examination of his civil claim for compensation was suspended. On 3 December 2004, the Izboskan District Court refused to examine the author's claim for compensation referring to the order of 7 October 2004.⁷

2.9 In November 2004, the author was interrogated as a witness in a case against 23 businessmen, who were tried for religious extremism. The author and other witnesses were told that the sentences would be milder if they confirmed that the businessmen belonged to the Akramaya religious organization. In April 2005, he was summoned to testify in the trial. He told the court that he had been unlawfully detained and tortured by the SNB but the judges did not react. When he refused to testify against the businessmen, the court ordered him to leave the room.

2.10 During the trial against the 23 businessmen, concerns over their torture and other violations led to protests. On 12 May 2005, a group of unidentified men released the businessmen from the city prison. That night, the author hid at a friend's place as he had noticed SNB officers visiting his neighbour. On 13 May 2005, the author joined a crowd of 10,000-15,000 people, mostly unarmed and including a large number of women and children, who demonstrated in Andijan's Bobur Square, expressing their concerns regarding the economy, government repression and judicial abuses. Government forces blocked exits from the square and fired indiscriminately on the crowd, killing 500 to 700 people⁸, including women and children. Soldiers sprayed fire into the crowd from jeeps or trucks driving at high speed. Some of the people killed were in the immediate vicinity of the author. Security forces made no attempt to use non-lethal force, to warn the crowd, to ask it to disperse, or to target the few gunmen on the margins of the crowd. People tried to flee under heavy fire from armoured personnel carriers and snipers while government forces fired indiscriminately, including at persons who held white headscarves above their heads. The author was walking arm-in-arm with two men, both of whom were shot dead. Most of the survivors, including the author, fled towards the border with Kyrgyzstan, walking for 10 hours a distance of around 50 km. At the border, they encountered Uzbek troops in armoured personnel carriers and military trucks. The troops opened fire, killing around eight people, including children and women, and wounding others. Kyrgyz border authorities permitted the crowd to enter the country in the morning of 14 May 2005.⁹ The author stayed in a refugee camp, then was evacuated by the International Organization for Migration to Romania and later transferred to the Netherlands. His wife and children were allowed to join him more than two years after he fled Andijan.

⁵ Statement of the author and his mother-in-law, dated 26 August 2004, to the Izboskan Inter-district Court of Civil Affairs.

⁶ Andijan Regional Court, decision of 16 September 2004, mentioning the author's allegations of his ill-treatment by the police.

⁷ Izboskan District Court, decision of 3 December 2004.

⁸ The author does not explain where this estimation comes from. According to the OSCE, a total of 300-500 people were likely killed on 13-14 May in Andijan or *en route* from Andijan at Teshik-Tash (OSCE, ODIHR, Preliminary findings on the events in Andijan, Uzbekistan, 13 May 2005 (with information as of 13 June), p. 8 (<https://www.osce.org/odihr/15653?download=true>)).

⁹ Reference is made to NGO reports, such as Human Rights Watch "Bullets Were Falling Like Rain. The Andijan Massacre, May 13, 2005", June 2005, (<https://www.hrw.org/reports/2005/uzbekistan0605/uzbekistan0605.pdf>); Amnesty International, "Uzbekistan: Lifting the siege on the truth about Andizhan", 19 September 2005, (<https://www.amnesty.org/download/Documents/84000/eur620212005en.pdf>). Further reference is made to the Report of the mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights (OHCHR) concerning the events in Andijan, Uzbekistan, 13-14 May 2005, E/CN.4/2006/119, 1 February 2006.

2.11 On 13 May 2005, the Prosecutor General's Office launched a criminal investigation into the Andijan events. The investigation did not address the violations committed by the security forces but focused on portraying the protesters as criminals and terrorists.¹⁰ The State party did not respond to the calls by international organizations to establish an international commission of inquiry. It closed the city, destroyed evidence, suppressed independent reporting, denied access to the city to rights defenders and journalists, prosecuted, detained and tortured survivors and intimidated witnesses and relatives of those who had fled.¹¹ Nine years after the massacre, the survivors' relatives remaining in Uzbekistan still lived in a "climate of fear", were regularly questioned and harassed.¹²

2.12 The trauma experienced by the author has caused him severe depression, anxiety attacks and post-traumatic stress syndrome.¹³

2.13 The author submits that he has exhausted all available effective domestic remedies. Until he fled Uzbekistan, he had been diligently notifying judicial and prosecutorial authorities of his detention and torture. The author notes that the State party has persistently refused to conduct any meaningful investigation into violations committed by the security forces during the Andijan massacre, despite substantial evidence and repeated calls from international organizations, and has recently declared the matter closed. Given the State party's refusal to investigate multiple and serious violations, any domestic remedies would have been futile and therefore did not need to be exhausted. The author also submits that even if an effective remedy did exist, it would be unavailable to him due to the fact that he was forced to flee the country in fear for his life and the government made it unsafe for him to return by subjecting all those associated with Andijan survivors to official harassment.

2.14 The author submits that his communication does not constitute an abuse of the right of submission, despite the fact that the alleged violations occurred more than five years before his complaint was filed to the Committee. The author fled his home in fear for his life, having barely survived a massacre. He was later held in refugee camps in Kyrgyzstan for a number of months.¹⁴ Once he was resettled in the Netherlands, he could not speak of his experiences for many years, due to his trauma, the desire not to attract attention, and out of fear of harassment of family members still in Uzbekistan.¹⁵ He did not have any support and was not aware of any avenues for complaints. He was aware of the Club of Fiery Hearts, but its director was herself imprisoned as part of the crackdown on civil society in Uzbekistan following the Andijan massacre. The author believed that other human rights organizations would be afraid of taking up a case against the SNB. Ms. Tadjibayeva resettled in France in March 2009 and was granted refugee status in December 2009. The Club of Fiery Hearts was registered in France in February 2011. The author contacted her once she was resettled. On 15 March 2012, Ms. Tadjibayeva submitted a complaint on behalf of the author to the

¹⁰ Report of the General Prosecutor's Office of the Republic of Uzbekistan on the results of the investigation of terrorist acts in Andijan (May 12-13, 2005), a document distributed to OSCE delegations.

¹¹ Reference is made, *inter alia*, to Human Rights Watch, "Burying the Truth Uzbekistan Rewrites the Story of the Andijan Massacre", September 2005 (<https://www.hrw.org/sites/default/files/reports/uzbekistan0905.pdf>).

¹² Reference is made, *inter alia*, to Human Rights Watch, "Uzbekistan: Stop Persecuting Andijan Refugees' Families", 4 May 2010 (<https://www.hrw.org/news/2010/05/04/uzbekistan-stop-persecuting-andijan-refugees-families>); Human Rights Watch, "Saving its Secrets: Government Repression in Andijan", May 2008 (<https://www.hrw.org/reports/2008/uzbekistan0508/uzbekistan0508web.pdf>); Andijan – Adolat va Tiklanish (Andijan – Justice and Revival Group), "Andijan Refugees Speak Out", 10 November 2010 (<http://en.hrsu.org/archives/836>).

¹³ Medical and psychological test report, South Netherlands Psycho-Trauma Centre, 3 September 2013.

¹⁴ The author entered Kyrgyzstan on 14 May 2005 and was evacuated to Romania on 29 July 2005. On 16 November 2005, he was transferred from Romania to the Netherlands. According to the author, while he was in Kyrgyzstan, the government of Uzbekistan attempted to coerce him into returning using his wife and mother-in-law.

¹⁵ The author's wife and children arrived to the Netherlands on 1 August 2007. The author submits a copy of his asylum application, dated April 2010, which stated that his mother-in-law remained in Uzbekistan because she had not managed to obtain an exit visa and that she was subjected to threats from public officers.

Committee but its registration was denied on 12 October 2012. Ms. Tadjibayeva contacted the Open Society Justice Initiative with a request to help with drafting legal arguments. When Ms. Tadjibayeva and Justice Initiative lawyers interviewed the author on 16 August 2012, he asked for assistance of a psychologist. It took about a year to organize appropriate psychological evaluation and sustained psychological support to ensure his efforts to obtain justice did not result in his re-traumatization. The author maintains that the time taken to prepare this communication is largely due to the actions of the State party, and more precisely, due to the trauma he experienced, which his representatives did not wish to exacerbate through rushing the preparation of the communication, due to persecution of the author's co-representative in this communication and due to harassment of those who remained in Uzbekistan.

The complaint

3.1 The author claims that between April 2003 and May 2004, he was periodically unlawfully and arbitrarily detained by the SNB and the CID in violation of article 9 (1) of the Covenant. On each occasion, he was held for more than two hours. These detentions were unlawful because they were not registered and he was not provided with a custody record, in violation of article 225 of the Criminal Procedure Code of Uzbekistan.¹⁶ He was never informed of his rights, including his right to counsel, and received death threats by the SNB. Even though his overnight detention on 7-8 May 2004 was formally based on a provision of the Administrative Liability Code, the Izboskan Regional Criminal Court held that the alleged victim's statement was not duly registered¹⁷, therefore the detention was illegal. Each of the author's detentions was arbitrary because their real purpose was entirely unrelated to the reasons provided. The fact that the author was offered a bribe proved that he was detained solely for the purpose of intimidating and coercing him into providing testimony against his business associates.

3.2 The author claims that during his detentions, he was seriously beaten and submitted to psychological abuse through repeated threats, in violation of article 7 of the Covenant. This ill-treatment resulted in his hospitalization and has caused him lasting physical and psychological harms. He submits that the State party failed to implement adequate safeguards to prevent his torture, thereby violating article 7 of the Covenant, read in conjunction with article 2 (2). In particular, the State party failed to register the author's detention, to notify his family, to provide the author's prompt access to an independent lawyer and to his family members, and to establish an independent body to monitor detention sites.

3.3 The author maintains that the State party repeatedly disregarded his complaints against unlawful detention and torture, despite the fact that he provided medical evidence of torture and the identities of the perpetrators. By failing to investigate these violations and to provide the author with access to effective remedies, including compensation and adequate reparation, the State party violated articles 7 and 9, read in conjunction with article 2 (3) of the Covenant.

3.4 The author claims that by using indiscriminate lethal force against Andijan demonstrators, the State party put his life at serious risk, in violation of article 6 (1), and his right to security of the person under article 9 (1) of the Covenant. He maintains that the conduct of the security forces, including the choice of weapons and absence of warnings, reveals that they actually sought to maximize the number of people killed without distinction.

3.5 The author maintains that his flight together with over 500 protesters into the neighbouring Kyrgyzstan under indiscriminate gun-fire by Uzbek forces constituted a forced expulsion and a violation of his freedom of movement and residence. He maintains that by creating conditions where he was required to flee his home to avoid being killed, the State party violated article 12 paragraphs (1) and (4) of the Covenant. The author claims that the

¹⁶ The author refers to Rule 7 of United Nations Standard Minimum Rules for the Treatment of Prisoners and to Principle 12 1 (a) and (b) of United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

¹⁷ Izboskan Regional Criminal Court, decision of 9 June 2004.

State party continues to persecute the survivors and that any refugee, such as himself, who would return to Uzbekistan would face a real risk of arbitrary detention and torture.

3.6 The author maintains that the State party failed to carry out an effective investigation into the violations of his right to life, right to security of the person and right to freedom of movement and did not provide him effective remedies, in violation of articles 6, 9 and 12 read in conjunction with article 2 (3) of the Covenant. The official investigation was not independent or impartial as it did not examine the responsibility of the security forces. It was also not thorough.¹⁸ The investigation process was shrouded in secrecy. The victims and their families were not involved. To the contrary, they were persecuted. Human rights defenders, journalists, and representatives of international organizations were subjected to an unprecedented repression campaign in an effort to silence any alternative account of the massacre. The author states that the official investigation was intended to mask the killing of 500 to 700 civilians by the security forces and did not investigate the forced expulsion of more than 500 Andijan victims from Uzbekistan. He submits that these violations could qualify as crimes against humanity.

3.7 The author requests the Committee to declare the State party responsible for the alleged violations of the Covenant and to:

- Urge the State party to facilitate and allow full access for an international commission of inquiry to investigate the detention and torture of the author and other business leaders in Andijan and the massacre of hundreds of unarmed civilians on 13 May 2005;¹⁹
- Urge the State party to pay just compensation for the author's torture and unlawful detention and for the harm he suffered during the massacre and the forcible removal of demonstrators from Andijan, and to provide full rehabilitation;
- Urge the State party to introduce safeguards to prevent similar violations against detainees by ensuring registration of all detainees from the moment of detention; establishing proper monitoring of detention facilities; providing an independent and secure complaints mechanism for allegations of torture; ensuring independent medical examinations where requested; creating an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and domestic legislation;
- Urge the State party to introduce safeguards to prevent unlawful use of lethal force in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Urge the State party to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under its law and that exceptional circumstances, such as internal political instability or other public emergencies, cannot be invoked to justify departure from these basic principles.

¹⁸ See para. 2.11 above. The author maintains that the investigators did not examine actions of security forces in connection to the killings. They did not examine ballistic evidence in order to determine how the bullets in gunshot victims compared with the weapons and ammunition used by government forces. They did not examine the trajectory of fire in order to determine the locations of the shooters. They did not investigate whether the victims had been armed or otherwise posed an imminent threat to life. There was no examination of gunshot wounds on the victims in order to determine if they had been shot in the back, while they were on the ground, in a defensive posture or otherwise positioned in a way that would indicate that they did not pose an imminent threat to life. The investigation did not try to establish which government bodies had been involved in the shootings and their chain of command. The investigation made no effort to determine the circumstances of deaths and gunshot injuries suffered by victims as they fled to Kyrgyzstan.

¹⁹ According to the author, the commission should have powers to *subpoena* witnesses, including government officials, to access police, SNB and court records, have unimpeded access to prisons for interviews, powers to request help of forensic experts, including international experts, to exhume bodies, and to initiate criminal prosecutions of those found to be the material and intellectual authors of these violations.

State party's observations on the merits

4. In its submissions of 2 April 2015, 7 September 2015 and 4 February 2016²⁰, the State party stated that the author had been on the record of the Izboskan District Office of Internal Affairs (ROVD) as a member of the extremist religious organization Akromiyar since 2005. On 12-13 May 2005, he participated in mass disturbances, following which he illegally fled for the Netherlands through Kyrgyzstan with his wife and children. According to the Department of Interior Affairs (UVD) of Andijan district, there is no data available as to persecution, detentions, criminal proceedings, investigations or operative search in relation to the author. The State party's courts have not examined administrative or criminal cases in his relation. According to the Ministry of Internal Affairs, two police officers whose names are mentioned in the communication have never served in the UVD of Andijan district.

Author's comments on the State party's observations on the merits

5.1 In his comments of 22 June 2015, the author noted that the State party's one-page observations did not address his detailed submissions as to the alleged violations of the Covenant, supported by extensive evidence, numerous eyewitnesses, journalistic and NGO reports.

5.2 Regarding the State party's allegation that two of the officers identified by the author have never served in the UVD of Andijan district, the author draws the Committee's attention to the decision of the Izboskan District Court of 3 December 2004, which refers to testimonies of those two officers, and to the decision of Izboskan District Court of Criminal Affairs of 9 June 2004, which refers to questioning one of them.

5.3 The author submits that the State party's failure to locate evidence of his detention suggests that his detentions and interrogations were not properly recorded.

5.4 The author notes that the State party does not contest his description of extensive violations committed during the Andijan massacre and does not give any indication that it conducted an investigation into the mass killings of the demonstrators and into the forced expulsion of the survivors to Kyrgyzstan.

5.5 In his observations of 1 December 2015, the author noted that the State party continued to give no indication that it had conducted an investigation into the massacre. By claiming that it had no information on his arrest, persecution and harassment, the State party effectively confirmed that it had not conducted any investigation into the detention and abuse which the author had suffered in the years preceding the massacre.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee takes note of the author's claim that his communication does not constitute an abuse of submission, despite the fact that it was submitted more than five years after the alleged violations. The Committee takes note of the author's arguments according to which the submission of his communication was delayed due to his severe psychological trauma caused by the alleged violations, to the persecution of his co-representative and to fear for his relatives who remained in Uzbekistan.

6.4 The Committee notes in that regard that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in bringing a communication to the Committee does not of itself involve an abuse of the right of

²⁰ The State party submitted three brief and nearly identical sets of observations.

submission.²¹ However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.²² In addition, according to rule 99(c) of the Committee's rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.²³

6.5 In the present case, the Committee observes that the author does not provide sufficient information in his submissions to suggest that he demonstrated due and timely diligence and initiative to claim the protection of his rights before the domestic authorities or the Committee. He submitted his first communication to the Committee with a notable delay of 8 years since his alleged arbitrary detention and torture and 7 years after the Andijan events. The Committee notes that the author resettled in the Netherlands in November 2005, that his wife and children joined him in August 2007 and that, according to the case file, his mother-in-law still remained in Uzbekistan in April 2010. The Committee notes however that the author does not offer any explanations as to the fear of his or his family's prosecution in the following years. The Committee is of the view that the author, who resettled in the Netherlands and obtained there a refugee status, was no longer threatened with persecution and was in a sufficiently secure position to bring a complaint before the State party's judicial authorities, or before this Committee, on his own or with assistance of a legal representative.

6.7 The Committee thus considers that the author has failed to provide a convincing explanation for the delay in submission of the present case. In the absence of any other information or explanation of pertinence on file, the Committee considers that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol and rule 99(c) of the Committee's rules of procedure.

6.8 Having reached this conclusion, the Committee decides not to examine any other inadmissibility ground.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.

²¹ *Polacková and Polacek v. Czech Republic* (CCPR/C/90/D/1445/2006), para. 6.3; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.

²² *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.

²³ This rule applies to communications received by the Committee after 1 January 2012.

Annex

Joint Opinion by Committee members H el ene Tigroudja and Arif Bulkan (dissenting)

1. We disagree with the decision of the Committee to declare the communication inadmissible due to the passage of time between the events (between 2003 and 2005) and the date of the communication before the Committee (May 2014). According to the majority, the passage of time constitutes an abuse of right under Rule 99-c of the Committee’s Rules of Procedure (RoP). This Rule stipulates that:

“With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 107, paragraph 1, of the present rules shall ascertain: [...] (c) That the communication does not constitute an abuse of the right of submission. An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility ratione temporis on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.”

2. Indeed, this communication was not submitted within the 5-year timeline stipulated by the Committee’s RoP. While the State party did not raise any objection on this ground, in practice the Committee has the prerogative to analyze *motu proprio* whether the communication meets the *ratione temporis* requirement and if not, whether the explanation offered by the author justifies the delay rendering the communication admissible. However, our disagreement is based on the way in which the majority of the Committee calculated the passage of time and assessed the explanation provided by the author in that regard.

3. In order to assess the “delay in submission”, the Committee relied on the dates of the facts at the basis of the claims (deprivation of liberty, arrests, beatings, and torture occurred between 2003 and 2005) and the date of the “initial submission” to this Committee (i.e., 23 May 2014), whereas Rule 99 c) does not refer to the time of the events but rather the exhaustion of domestic remedies (or international proceedings if applicable) the point at which time starts to run. In that regard, the author thoroughly and convincingly explained why his communication “does not constitute an abuse of right” (para. 2.14) since there were no formal domestic remedies to exhaust in relation to his claims and in view of the chain of events that unfolded after the events. He started by stressing the context of the Andijan massacres (2005) he fled, “in fear for his life”. After spending several months in Kyrgyzstan, he settled in the Netherlands but did not want to share his experience, fearing that his family members who remained in Uzbekistan would be subjected to harassment. Then, he was granted the status of refugee in France in 2009 and after several attempts, he obtained the support of Open Society Justice Initiative to draft his communication. It means that from the moment he fled Uzbekistan until his application before the Committee, the author did not remain inactive. On the contrary, he did his best to ask for help to present his claims at the international level and “the time taken to prepare this communication is largely due to the actions of the State party, and more precisely, due to the trauma he experienced, which his representatives did not wish to exacerbate through rushing the preparation of the communication, due to persecution of the author’s co-representative in this communication and due to harassment of those remained in Uzbekistan” (para. 2.4).

4. The State Party did not respond to this serious claim and did not contest the admissibility of the communication. It only stressed in its “observations on the merits” that the author was a “member of [an] extremist religious organization” and in May 2005, “he participated in mass disturbances, following which he illegally fled for the Netherlands through Kyrgyzstan with his wife and children” (para. 4). However, the claims of the author are supported by the recent Concluding Observations adopted by this Committee (almost at

the exact same moment when this inadmissibility decision was adopted), where the Committee:

“reiterates its previous concern (CCPR/C/UZB/CO/4, para. 10) about the lack of a full, independent and effective investigation into the mass killings and injuries by military and security services during the Andijan events in May 2005 and regrets the State party’s assertion that these events do not require any international investigation and that this matter is considered closed. It also regrets the lack of clear information on the compliance of the Firearms Act of 2019 with the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (arts. 2 and 6).”¹

5. Although on one hand, the Committee expressed concern in its 2020 Concluding Observations about the prevalence of impunity and the unwillingness of the State Party to ensure access to truth and justice to victims of the Andijan events, on the other hand it indicated that the author “was in a sufficiently secured position to bring a complaint before the State party’s judicial authorities [...]” (para. 6.5). This position of the majority is clearly at odds with its statements on the State Party’s concrete situation and is totally oblivious to the fact that at least until 2010, the author had family members living in Uzbekistan, and therefore had valid reasons to fear for their security. As such, the reasons for the time taken by the author to submit this communication are fully justified by both the general situation in the State party (as acknowledged by this Committee in another context) and the specific situation faced by the author over that period of time.

6. Based on the specific context of impunity around the Andijan massacres stressed by the Committee in its 2020 Concluding Observations and the exceptional situation of the author, who was forced to flee his country, we are of the view that the Committee should have declared the communication admissible. On the merits, the facts amount to a violation of Articles 6, 7, 9 and 12 of the Covenant, read alone and in conjunction with the lack of remedies and investigation under Article 2(3).

¹ CCPR/C/UZB/CO/5, 1 May 2020, para. 16.