

Before the United Nations Human Rights Committee

Follow-up procedure

In the case of

Azimjan ASKAROV

against

Kyrgyzstan

(Communication No. 2231/2012)

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

to

The United Nations Human Rights Committee

c/o Petitions Team

Office of the High Commissioner for Human Rights

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I. FACTUAL SUMMARY

A. Background of the Case

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

B. The Committee's Views

2. On 12 November 2012, the Open Society Justice Initiative and one of Mr. Askarov's lawyers, Nurbek Toktakunov, submitted a communication to the UN Human Rights Committee (hereinafter "Communication") on behalf of Mr. Askarov.
3. The UN Human Rights Committee (hereinafter "Committee") in its Views, which was adopted on 31 March 2016 at the Committee's 116th session and made public on 21 April 2016, found that Mr. Askarov was tortured and denied fair trial procedural guarantees in violation of his rights under the International Covenant on Civil and Political Rights (hereinafter "ICCPR").¹

The Committee, acting under Article 5 (4) of the Optional Protocol, found a violation of Articles 2 and 7, read separately and in conjunction with Article 2(3), and Articles 9(1), 10(1) and 14(3)(b) and (e) of the ICCPR,² and reiterated the obligation of the State party under Article 2 (3) (a) of the ICCPR to provide Mr. Askarov with an effective remedy. This required Kyrgyzstan to make full reparation to Mr. Askarov, take appropriate steps to immediately release him, quash his conviction and, if necessary, conduct a new trial in due compliance with fair trial guarantees.

Pursuant to the Committee's Views, Kyrgyzstan was required to submit information, within 180 days, on the measures taken to remedy the determined violations, and to publish the Views.³

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

The Retrial at the Chuy Regional Court

4. On 12 June 2016, the Supreme Court of Kyrgyzstan, "in the light of new circumstances and in accordance with the decision of the Committee of 21 April 2016 and in view of the statements of the lawyer Toktakunov,"⁴ vacated the appeal judgment and the Supreme Court's decision—and ordered a new review of the case by the appeal court.⁵ The Supreme Court, however, did not vacate the judgment of the trial court.

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

² *Ibid.*, para. 9.

³ *Ibid.* paras. 10-11.

⁴ International Commission of Jurists, 2019, para. 31.

⁵ *Ibid.*

5. Following the decision of the Supreme Court, the case was remanded for retrial to the Chuy Regional Court in light of “new circumstances.” The Supreme Court did not quash the defendant’s conviction but “resum[ed]” the proceedings in the case⁶ in accordance with Article 442 of the Code of Criminal Procedure.⁷ This decision meant that the investigation results from the initial case remained as evidence and no new investigation was conducted.
6. The retrial took place from 4 October 2016 to 24 January 2017. According to a comprehensive report published by the *International Commission of Jurists*, and statements made by other human rights organizations monitoring the retrial, the proceedings were marred by irregularities and violations.⁸
7. At the conclusion of the retrial on 24 January 2017, the Chuy Regional Court upheld the original life sentence imposed on Mr. Askarov in 2010. As explained in Part II, the retrial did not provide a thorough and fair reconsideration of the case in accordance with the right to a fair trial and did not remedy the violations of Mr. Askarov’s rights established by the Committee.⁹

Review before the Supreme Court

8. Mr. Askarov filed an appeal to the Supreme Court on 14 February 2020 and a review was scheduled for 25 February 2020. Only 16 people were admitted as observers.
9. On 25 February 2020, the review was postponed to 6 April 2020, due to the prosecutor’s office asking for additional time to study the complaint.
10. On 22 March 2020, the Government of Kyrgyzstan declared a state of emergency and introduced restrictions on public life as a response to the COVID-19 outbreak. The hearing of the case in the Supreme Court was then scheduled for 13 May 2020.
11. On 13 May 2020, the Supreme Court upheld the life sentence of Mr. Askarov. The Supreme Court neither conducted a thorough analysis or examination of the decision made by the Chuy Regional Court nor provided a well-reasoned decision. It simply repeated the conclusions of lower courts, cited the same evidence and confirmed the verdict. It did not discuss the obligation to implement the decision of the Committee, evidence that Mr. Askarov was tortured and dismissed all defense arguments as irrelevant as “they were already considered during the hearings by the lower courts.”¹⁰ The Supreme Court also stated without providing justification that “arguments by the defense that the hearings by the courts are held in accusatory manner and are one sided are not supported by the

⁶ International Commission of Jurists, *The Azimjan Askarov Case, Judicial Proceedings Based on the Decision of the UN Human Rights Committee - A Legal Opinion*, para. 39.(2019), available at <https://www.icj.org/wp-content/uploads/2019/07/Kyrgyzstan-Askarov-report-II-Advocacy-analysis-brief-2019-ENG.pdf> (hereinafter “International Commission of Jurists, 2019”).

⁷ CCP, Article 442: “1. A convicting judgment, determination, resolution of the court that has entered into legal force may be repealed and the proceedings in the case resumed in light of new or newly discovered circumstances.”

⁸ International Commission of Jurists, 2019; Front Line Defenders, *Azimjan Askarov sentenced to life imprisonment*, <https://www.frontlinedefenders.org/en/case/azimjan-askarov-sentenced-life-imprisonment>; *World Organization Against Torture, Kyrgyzstan: Life sentence of Mr. Azimjan Askarov upheld by Chuy Regional Court of Kyrgyzstan - Urgent Appeal* (31 July 2019), <https://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2019/07/d25463/>; Amnesty International, *Public Statement, Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally*, (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

⁹ International Commission of Jurists, 2019, para 127.

¹⁰ Supreme Court Decision, Case #4-0182/20, p.11-12.

case file and by the court hearings.”¹¹ This hearing at the Supreme Court was Mr. Askarov’s last opportunity to appeal his case at the national level.

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

12. Separate from his application for retrial based on the decision of the Committee, Mr. Askarov also applied for a review of his sentence on the basis of amendments to the Criminal Code of Kyrgyzstan that came into force on 1 January 2019.¹² On 30 July 2019, the Chuy Regional Court denied his request, and on 2 December 2019, the Supreme Court upheld the punishment of life imprisonment, while commuting some other lighter sentences of Mr. Askarov.

E. Administrative Lawsuit for Non-implementation of the Committee’s Decision

13. On 23 November 2019, Mr. Askarov submitted a request to the Government of Kyrgyzstan to inform him of the measures taken to implement the Views of the Committee in his case. No response has been received from the Government to date.
14. On 4 December 2019 Mr. Askarov received a letter from the Ombudsman’s office that recounted judicial decisions related to his case and stated that he had used all the available domestic remedies provided by the national legislation of Kyrgyzstan.
15. In February 2020, through one of his counsel, Valerian Vakhitov, Mr. Askarov submitted an administrative lawsuit to the Interdistrict Court of Bishkek asking to annul the act of the Government that forwarded the request for the implementation of the Views to the Ombudsman, as the Ombudsman institution is not part of the executive. He also requested that the Court order the Government to publish the Views of the Committee, to request the Prosecutor General to reopen the case in light of the Views, and to inform Mr. Askarov about the measures taken to implement the Views.
16. The Kyrgyz government representative requested that the Court dismiss the administrative lawsuit by arguing that the Committee’s Views are advisory. In addition, the requirements of the Committee’s Views of immediately releasing Mr. Askarov, quashing his conviction, and paying compensation are not administrative in nature and can be only implemented through a judicial process by the courts of the Kyrgyz Republic.
17. When the matter came up for hearing on 11 May 2020, Judge Cholpon Dosmambetova declined to hear it on account that she did not have jurisdiction, since a December 2019 law and which was assented to in April 2020 had transformed the Interdistrict Court into an Administrative Court. This came as a surprise to all the parties including the media which reported that the law, the Judge was referring to had not been published.
18. Accordingly, on 12 June 2020, at the first hearing of the case, Judge Cholpon Dosmambetova terminated the proceedings, noting that the case could not be subject to administrative processing since the dispute did not arise from administrative relations between the Kyrgyz Government and Mr. Askarov.

¹¹ Ibid.

¹² Amnesty International, Public Statement, *Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally* (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

19. On 20 August 2020, the appeal panel declined the request of Mr. Askarov's wife Khadija to recognize her as a party to the administrative case and confirmed the decision of the Administrative Court.

F. International Calls for the Release of Mr. Askarov on Humanitarian Grounds Considering his Deteriorating Health Condition and the COVID-19 Pandemic

20. Mr. Askarov was among those at greatest risk of severe illness or death from COVID-19. He was 69 years old, had spent almost 10 years in detention and had underlying health conditions including heart disease, hypertension, respiratory issues, fever and neurological irregularities.
21. Following the World Health Organization (WHO) declaring COVID-19 a pandemic and confirmation of the first cases in Kyrgyzstan many international organizations expressed their concern over Mr. Askarov's health. They also decried inaction of prison authorities to effectively respond and treat him. From 31 March 2020, they started a campaign urging Kyrgyz authorities to urgently release Mr. Askarov on humanitarian grounds.
22. These appeals included a joint statement from *Amnesty International, Civil Rights Defenders, Committee to Protect Journalists Front Line Defenders, Helsinki Foundation for Human Rights, Human Rights Watch, International Federation for Human Rights* and *World Organisation Against Torture (OMCT)* (sent on 31 March);¹³ another letter from Amnesty International (22 April);¹⁴ a statement from members of the United State Senate (8 May);¹⁵ a statement by *Mary Lawlor*, UN Special Rapporteur on the situation of human rights defenders (8 May);¹⁶ a report by *Human Rights Watch* (11 May);¹⁷ a statement by the Director of the *OSCE Office for Democratic Institutions and Human Rights (ODIHR)* (13 May);¹⁸ and an urgent appeal by the *Human Rights Foundation (HRF)* (8 July) to the Special Procedures of the UN Office of the High Commissioner for Human Rights (OHCHR), requesting that it initiate an immediate formal investigation into the wrongful arrest, unwarranted charges, and ongoing detention of Mr. Askarov.¹⁹
23. However, despite these repeated calls, the Kyrgyz authorities neither released Mr. Askarov nor provided him with appropriate medical attention.

¹³ Letter to Kyrgyz President Jeenbekov to Release Azimjan Askarov due to COVID-19, Press Release, International Federation of Human Rights (31 March 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/letter-to-kyrgyz-president-jeenbekov-to-release-azimjan-askarov-due>.

¹⁴ Amnesty International, "Health of Prisoner of Conscience at Risk AT RISK (22 April 2020) <https://www.amnesty.org/download/Documents/EUR5821952020ENGLISH.pdf>

¹⁵ United States Senate Committee on Foreign Relations, Press Release, Menendez, Six Senate Colleagues Call on Kyrgyzstan President to Release Prisoners (8 May 2020), <https://www.foreign.senate.gov/press/ranking/release/menendez-six-senate-colleagues-call-on-kyrgyzstan-president-to-release-prisoners->

¹⁶ United Nations Human Rights, Office of the High Commissioner, Press Release, Kyrgyzstan must uphold its human rights obligations and release human rights defender Azimjan Askarov, says UN expert (8 May 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25872&LangID=E>

¹⁷ Human Rights Watch, "Kyrgyzstan Should Grant Rights Defender His Freedom - Azimjon Askarov's Final Appeal to Be Heard" (11 May 2020) <https://www.hrw.org/news/2020/05/11/kyrgyzstan-should-grant-rights-defender-his-freedom>

¹⁸ OSCE-ODIHR, "ODIHR Director very concerned about decision to uphold life sentence for Azimjan Askarov" (13 May 2020) <https://www.osce.org/odihr/452260>

¹⁹ The Human Rights Foundation (HRF), "HRF Submits Urgent Appeal to the U.N. to Free Human Rights Activist Detained in Kyrgyzstan" (8 July 2020) https://hrf.org/press_posts/hrf-submits-urgent-appeal-to-the-u-n-to-free-human-rights-activist-detained-in-kyrgyzstan/

G. Death of Mr. Askarov

24. On 9 July 2020, Mr. Askarov sought medical help from the prison ward, complaining of a high temperature and general weakness.²⁰
25. On 10 July 2020, the human rights movement “*Bir Duino Kyrgyzstan*” called on the authorities to immediately release Mr. Askarov since his health was deteriorating. The movement underlined the fact that during their last visit, Mr. Askarov complained that his legs were constantly freezing despite all attempts to warm them up, it was hard for him to breathe, and he had chest pains.²¹ However, Samat Kalykov, press secretary of the State Penitentiary Service of Kyrgyzstan publicly denied this information by announcing that Mr. Askarov was fine, everything was under control, not a single case of pneumonia or COVID-19 had been recorded in the prisons, and the situation was stable.²² The Service insisted that any reports to the contrary should be considered as inaccurate.²³
26. On 16 July 2020, representatives from the office of the Ombudsman visited Mr. Askarov in prison. They reported that they had taken Mr. Askarov’s blood pressure and temperature and that they were not concerned about his health, despite Mr. Askarov telling them that he had had high temperature for several days, was feeling achy, had no appetite, and had trouble swallowing. The representatives also reported that Mr. Askarov was receiving glucose injections, vitamin supplements and treatment for his fever.
27. On 20 July 2020, the fact that Mr. Askarov was seriously ill with COVID-19-like symptoms became known. This is also when his family learned that Mr. Askarov had been seriously ill.
28. On 22 July 2020, Mr. Askarov’s lawyer Valeryan Vakhitov managed to visit him in prison and reported that his health had deteriorated significantly and that he was in critical condition.²⁴ According to his lawyer, Mr. Askarov was unable to walk without being supported by prison guards. He had reportedly lost a lot of weight, and his body temperature was rising and falling sharply, causing him to break out in sweats. As he could barely eat, he had been receiving glucose injections. His lawyer also noticed that Mr. Askarov looked particularly pale, his skin looked yellowish in color, he was coughing a lot, and he could barely speak. The lawyer was told by the medical personnel that Mr. Askarov had been sick for approximately 10 days. After seeing the critical condition in which Mr. Askarov was, his lawyer filed two written requests for information with the Prison management requesting his medical files in order to find out what kind of medical attention he had been receiving.
29. Despite the recent surge of COVID-19 cases and “community-acquired pneumonia” in the country, the State Penitentiary Service of Kyrgyzstan was refusing to test prisoners for COVID-19. According to the management of the prison, none of the prisoners at the penal colony No. 19 had been tested for

²⁰ See the statement of the State Penitentiary Service of Kyrgyzstan in Russian: <http://gsin.gov.kg/certainnews/157>

²¹ Bir Duino, “Правозащитники Обеспокоены Резким Ухудшением Здоровья Осужденного Азимжана Аскарова И Призывают Государство Освободить Его По Гуманитарным Соображениям” (10 July 2020) <http://birduino.kg/pressaru/pravozashhitniki-obespokoenyi-rezkim-uxudsheniem-zdorovya-osuzhdennogo-azimzhana-askarova-i-prizyvayut-gosudarstvo-osvobodit-ego-po-gumanitarnyvim-soobrazheniyam?fbclid=IwAR2f9g5HGv5QbhYBCB0XinywsLJ3d6vb6XHBmpEhKxc3ieR-n8T7LoSWkvQ>

²² Клоор, Айдай Токоева, “Правозащитники попросили освободить Аскарова из-за ухудшения здоровья. ГСИН утверждает, что «все под контролем»” (10 July 2020) <https://kloop.kg/blog/2020/07/10/pravozashhitniki-poprosili-osvobodit-askarova-iz-za-uhudsheniya-zdorovya-gsin-utverzhaet-cto-vse-pod-kontrolem/>

²³ Ibid.

²⁴ <https://www.frontlinedefenders.org/en/case/azimjan-askarov-sentenced-life-imprisonment>

COVID-19, as “*the convicts practically do not contact anyone*”. The head of the prisoner’s medical unit added that the prison did not have the equipment to test prisoners, nor do they have sufficient medication.²⁵ Only the prison staff had been tested for COVID-19 when necessary.²⁶ Hence, despite his COVID-19-like symptoms, Mr. Askarov was not tested for COVID-19.

30. On 23 July 2020, Human Rights Watch published a blog post, underscoring the fact that Mr. Askarov was among those at greatest risk of severe illness or death from COVID-19; and that as long as Kyrgyz authorities wrongfully kept him in detention, they were exposing him to a significant risk of contracting COVID-19, which given his age and state of health, could be fatal.²⁷ Also on 23 July, the human rights movement “*Bir Duino Kyrgyzstan*” repeated their call for Mr. Askarov’s immediate release.²⁸
31. On 24 July 2020, when the State Penitentiary Service of Kyrgyzstan was questioned by journalists regarding Valeryan Vakhitov’s statement about Mr. Askarov’s deteriorating health, a spokesperson described that statement as “inaccurate information.” The spokesperson told the journalists that “[i]n the place where Askarov is being held, prisoners have their temperature checked three times daily. There are drugs and medical personnel – we have everything in sufficient quantities.”²⁹
32. Although Mr. Askarov had been in critical condition for a while, it was not until 24 July 2020 that he was transferred to the penal colony No. 47 for medical examination and put on an oxygen concentrator after he was diagnosed with “double pneumonia”. Mr. Askarov demanded that to independent professional doctors be given access to the colony to examine and treat him, but he was denied.³⁰
33. Mr. Askarov died in the morning of 25 July 2020. The cause of death has been recorded as “double pneumonia”.³¹ Having not been tested, it is unclear whether Mr. Askarov and the rest of the prisoners were exposed to the coronavirus. The Ministry of Foreign Affairs of Kyrgyzstan asserted later that Mr. Askarov’s pneumonia was the result of an “aggravated cold”. However pneumonia, in the absence of widespread testing, has been included in COVID-19 statistics in Kyrgyzstan since July 2020.³²

²⁵ See urgent appeal launched by Front Line Defenders on 22 July 2020, available at:

https://www.frontlinedefenders.org/sites/default/files/kyrgyzstan_-_ua_azimjan_askarov_-_22_jul_2020.pdf

²⁶ See Fergana Agency, Состояние Азимжана Аскарова в колонии резко ухудшилось

(27 July 2020) <https://fergana.agency/news/120423/?country=kg>

²⁷ Human Rights Watch, “Kyrgyzstan Should Release Seriously Ill Rights Defender - Azimjon Askarov at Risk of Covid-19 Exposure, Requires Urgent Medical Care” (23 July 2020) <https://www.hrw.org/news/2020/07/23/kyrgyzstan-should-release-seriously-ill-rights-defender>

²⁸ Bir Duino, “Правозащитники Призывают Немедленно Освободить Тяжело Больного Азимжана Аскарова По Гуманитарным Соображениям” (23 July 2020)

<http://birduino.kg/pressaru/pravozashhitniki-prizyvayut-nemedlenno-osvobodit-tyazhelo-bolnogo-azimzhana-askarova-po-gumanitarnym-soobrazheniyam>

²⁹ Eurasianet, “Kyrgyzstan: Will fury around Askarov death end up signifying nothing?” (29 July 2020)

<https://eurasianet.org/kyrgyzstan-will-fury-around-askarov-death-end-up-signifying-nothing>

³⁰ Front Line Defenders, “Statement on the death of human rights defender Azimjan Askarov” (25 July 2020)

<https://www.frontlinedefenders.org/en/statement-report/front-line-defenders-statement-death-human-rights-defender-azimjan-askarov>

³¹ See the official postmortem report stating that Mr. Askarov had succumbed to acute respiratory failure precipitated by bilateral pneumonia <https://www.facebook.com/photo.php?fbid=3356100311095748&set=a.1459960560709742&type=3&theater>. The report has been publicly shared by Tolekan Ismailova in her Facebook account.

³² In July, Kyrgyzstan began merging its figures on pneumonia infections, which have surged intensely in 2020, with those for coronavirus – an admission that the two outbreaks were strongly correlated. See Almaz Kumenov, Ayzirek Imanaliyeva “Pneumonia fudge hiding scale of Central Asia’s coronavirus emergency” Eurasianet (16 July 2020)

<https://eurasianet.org/pneumonia-fudge-hiding-scale-of-central-asias-coronavirus-emergency>

The Ministry of Health of Kyrgyzstan also officially recognizes pneumonia cases as “undiagnosed COVID-19 cases”.³³

34. On 25 July 2020, following the death of Mr. Askarov, the State Penitentiary Service of Kyrgyzstan reported their version of the events. A press release (in Russian)³⁴ stated that, after medical workers examined Mr. Askarov on 9 July 2020, they suggested that he be transferred to the better-equipped correctional facility penal colony No. 47. However, authorities allege that he refused to be transferred. According to the 25 July press release, Mr. Askarov was under constant medical supervision, but he refused treatment after he was forcibly transferred to the penal colony No. 47 for medical treatment and he even tore the oxygen mask off of his face. At 9.30 am on 25 July 2020, Askarov allegedly again removed the oxygen mask from his face, which resulted in his death. His time of death was announced as 10.30 am.
35. On 25 July 2020 and the days following, several governments, intergovernmental bodies, and civil society organizations expressed their profound sadness and concern, noting that they had been calling for Mr. Askarov’s release on humanitarian grounds for months. These included the OSCE Office for Democratic Institutions and Human Rights (ODIHR),³⁵ French Ambassador for Human Rights and Federal Government Commissioner François Croquette,³⁶ Human Rights Watch³⁷, Front Line Defenders³⁸ and others. The spokesperson for Foreign Affairs and Security Policy of the European Union called for an investigation to clarify” the circumstances of his death, and the conditions in which he was held.”³⁹
36. The spokesperson for the OHCHR called for “a prompt, impartial and effective investigation into his death,” and reiterated that “[u]nder international human rights law, his family have the right to redress.”⁴⁰ Mary Lawlor, the UN Special Rapporteur on the situation of human rights defenders, stated that although the Kyrgyz Government shared detailed information on court proceedings and medical care afforded to Mr. Askarov, his death “shows a cruel disregard for human rights in Kyrgyzstan”.⁴¹

³³ Fergana Agency, “МИД Киргизии дал согласие на похороны Аскарлова в Узбекистане”

<https://fergana.plus/news/120653/?country=kg>

³⁴ See the statement of the State Penitentiary Service of Kyrgyzstan in Russian: <http://gsin.gov.kg/certainnews/157>

³⁵ OSCE-ODIHR, “ODIHR deeply saddened by death of human rights defender Azimjan Askarov” (25 July 2020) <https://www.osce.org/odihr/458071>

³⁶ “Human Rights Commissioner Kofler and French Ambassador for Human Rights Croquette on the death of Kyrgyz human rights defender and journalist Azimjan Askarov”, press release, (28 July 2020) <https://www.auswaertiges-amt.de/en/newsroom/news/azimjan-askarov/2371538>

³⁷ Human Rights Watch, “Kyrgyzstan Must Answer for the Death of Activist Azimjon Askarov” (25 July 2020) <https://www.hrw.org/news/2020/07/30/kyrgyzstan-must-answer-death-activist-azimjon-askarov>

³⁸ Front Line Defenders, “Statement on the death of human rights defender Azimjan Askarov” (25 July 2020) <https://www.frontlinedefenders.org/en/statement-report/front-line-defenders-statement-death-human-rights-defender-azimjan-askarov>

³⁹ European Union, “Kyrgyzstan: Statement by the Spokesperson on the passing of Azimjan Askarov” (26 July 2020) https://eeas.europa.eu/headquarters/headquarters-homepage_en/83405/Kyrgyzstan:%20Statement%20by%20the%20Spokesperson%20on%20the%20passing%20of%20Azimjan%20Askarov

⁴⁰ Office of High Commissioner for Human Rights, Press Briefing note on Kyrgyzstan (28 July 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26128&LangID=E>.

⁴¹ “Kyrgyzstan: Death of human rights defender Azimjan Askarov a stain on country’s reputation, says UN expert”, Mary Lawlor, the UN Special Rapporteur on the situation of human rights defenders (30 July 2020) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26138&LangID=E>

37. Mr. Askarov had requested that he be buried in his historical homeland. His family also had concerns that his grave in Kyrgyzstan would become a target and get damaged. On 30 July 2020, the Ministry of Foreign Affairs of Kyrgyzstan granted permission to the burial of Mr. Askarov in Uzbekistan.⁴² Mr. Askarov's body was carried to Uzbekistan through the Dostuk checkpoint in Osh. On 31 July 2020, his funeral ceremony took place in the village of Yangibozor in the Tashkent region, Uzbekistan.

II. FOLLOW-UP TO THE COMMITTEE'S VIEWS

38. The Government of Kyrgyzstan has either not made sufficient progress or any progress at all to implement the Views of the Committee, including quashing his conviction, releasing him immediately, conducting an effective investigation regarding his torture, providing reparations, introducing safeguards against torture in detention as well as publishing the Views (Section A). In addition, the Government has not fulfilled its obligation to protect the right to life and health of Mr. Askarov while in detention, by not releasing him on humanitarian grounds during the COVID-19 pandemic considering his age and health condition, and not providing him adequate medical care when he was seriously ill, which at the end resulted in his death (Section B).

A. Failure to Implement the Views of the Committee

39. States that have ratified the Optional Protocol have an obligation to cooperate with the Committee in good faith and accept its authoritative interpretation of whether the ICCPR has been violated in individual cases brought under the Protocol.
40. As the Committee has reiterated, "by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not."⁴³ This obligation has been clarified in General Comment 33, in which the Committee explains that the "duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations,"⁴⁴ and emphasizes that "[t]he views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the ICCPR itself charged with the interpretation of that instrument."⁴⁵
41. Kyrgyzstan has failed to implement the Views of the Committee or to provide remedies for the violations, as set forth in the following sections. It neither immediately released Mr. Askarov, nor conducted an effective investigation of his torture, nor quashed Mr. Askarov's conviction, nor published the Committee's Views, all of which the Committee had called for. Rather, the Supreme Court remanded the case for retrial by the Chuy Regional Court, which was marred by violations and irregularities: the Court failed to effectively examine the allegations of torture of Mr. Askarov in detention, and also failed to conduct new investigations, hear new witnesses or question elements on which the initial conviction was based. In sum, the retrial did not respect the presumption of innocence or comply with the requirements of a fair trial. These proceedings are therefore insufficient

⁴² Fergana Agency, "МИД Киргизии дал согласие на похороны Аскарлова в Узбекистане" (30 July 2020)

<https://fergana.plus/news/120653/?country=kg>

⁴³ E.g., HRC Views, Askarov, para.11.

⁴⁴ HRC, General Comment 33 (CCPR/C/GC/33), The Obligation of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 5 November 2008, para.15 (citing the Vienna Convention on the Law of Treaties, 1969, Article 26).

⁴⁵ *Ibid.* para. 13.

to remedy the violations of human rights found by the Committee. The Government has not provided any reparations or compensation to Mr. Askarov and/or his family.

42. By refusing to accept the conclusions of the Committee regarding the interpretation and violations of the ICCPR in this case, and refusing to implement the remedies identified, the Government of Kyrgyzstan has failed to cooperate in good faith with the Committee and to provide an effective remedy.

Failure to Release Mr. Askarov Immediately, Quash his Conviction, and Conduct a Fair Trial

43. The Committee in its Views, required Kyrgyzstan to take appropriate steps to immediately release Mr. Askarov, quash his conviction and, if necessary, conduct a new trial in due compliance with fair trial guarantees.⁴⁶ The State took none of these steps. Rather, the Supreme Court remanded the case for retrial by the Chuy Regional Court.
44. The retrial, which took place from 4 October 2016 to 24 January 2017 at the appeal level, was marred by irregularities and violations according to a comprehensive report published by the International Commission of Jurists highlighted below, and statements made by other human rights organizations monitoring the retrial.⁴⁷
45. *The retrial proceeded without quashing Mr. Askarov's conviction but with "resumption" of the proceedings in the case.*⁴⁸ On 12 June 2016, following the Committee's decision of 21 April 2016, the Supreme Court vacated the original judgments and remanded the case for retrial at the appeal level to the Chuy Regional Court, due to new circumstances. However, on 4 October 2016, at the first hearing, the Court dismissed the defense attorney's request to return the case to the prosecutor for additional investigation. By failing to conduct a new investigation, the Court relied on the earlier proceedings, showing a strong tendency to confirm, rather than question or reexamine, the earlier findings. However, the earlier findings resulted from an investigation and trial that were tainted by torture and other human rights violations.⁴⁹ In particular, the Court failed to exclude information obtained in violation of Article 7 of the ICCPR and therefore the retrial did not meet the standard of fairness, and failed to comply with the prohibition on the use as evidence of information obtained by torture.
46. As concluded by the International Commission of Jurists,⁵⁰ the requirements of a fair trial required that the retrial of Mr. Askarov should be conducted in disregard of the previous conviction of Mr. Askarov, which the Committee had held should be quashed. Fairness of the retrial should be untainted by evidence already found to have violated the requirements of a fair trial and that a full opportunity

⁴⁶ HRC Views, Askarov, para.10.

⁴⁷ International Commission of Jurists, 2019; Front Line Defenders, *Azimjan Askarov sentenced to life imprisonment*, <https://www.frontlinedefenders.org/en/case/azimjan-askarov-sentenced-life-imprisonment>; World Organization Against Torture, *Kyrgyzstan: Life sentence of Mr. Azimjan Askarov upheld by Chuy Regional Court of Kyrgyzstan - Urgent Appeal* (31 July 2019), <https://www.omct.org/human-rights-defenders/urgent-interventions/kyrgyzstan/2019/07/d25463/>; Amnesty International, Public Statement, *Kyrgyzstan: Prisoner of conscience Azimjan Askarov must be released unconditionally* (30 July 2019), <https://www.amnesty.org/download/Documents/EUR5808082019ENGLISH.pdf>.

⁴⁸ International Commission of Jurists, 2019, para 4.

⁴⁹ *Ibid.*, para 122.

⁵⁰ *Ibid.*, para 128.

be given to the defendant to prepare his defense, to cross examine witnesses against him, and to call his own witnesses.

47. *The Court failed to hear new witnesses and to collect new evidence.* The Court did not invite any new witnesses in addition to those heard during the first trial. Mr. Askarov was not able to call and examine witnesses on an equal footing with the prosecution. The Court refused to grant a motion by the defense to allow two potentially significant witnesses: Mr. Askarov's wife, Khadija, and his brother, Khakimjon.⁵¹ According to Mr. Askarov, over 10 additional witnesses could have been called to testify in his defense, but they were never subpoenaed.⁵² Seven police officers who had witnessed Officer Sulaimanov's killing were granted victim status in the case, rather than called as witnesses, which was the status that they had been afforded throughout the initial stages of the trial. Given the fact that these police officers were key witnesses and the fact that their testimony was clearly critical to establishing the facts in the case, this decision was dubious.⁵³
48. The Court failed to treat the inconsistencies and conjectures in oral testimony as grounds for doubt and failed to consider gaps in documentary evidence. A significant proportion of prosecution witnesses were reluctant to go into detail concerning the events leading to the death of the police officer, and their testimonies were vague and confused, at best.⁵⁴ However, the Court accepted that evidence without questioning clear inconsistencies in the testimonies. The Court also did not properly address questions raised regarding the credibility of some of the officer witnesses who might have acted with malice because Mr. Askarov, in his capacity as a human rights defender and investigative journalist, had investigated them for alleged misconduct.⁵⁵ For example, throughout the retrial, numerous references were made to a video recording which allegedly shows Mr. Askarov standing on the bridge on the day of the murder. However, despite repeated requests by Mr. Askarov to produce the "incriminating" video if it existed, no such recording was produced.⁵⁶
49. As a result, the retrial of Mr. Askarov did not respect the presumption of innocence or comply with the requirements of a fair trial sufficient to remedy the violations of Mr. Askarov's rights under Article 14 of the ICCPR, as found by the Committee.
50. The mere fact that the court hearing at the first instance was open to public and attended by several civil society actors does not make it "fair" under Article 14 ICCPR. The right to a fair trial required that Mr. Askarov's previous conviction be disregarded at his retrial, in accordance with the Committee's decision to quash it; that the retrial should be untainted by evidence already found to have violated the requirements of a fair trial; and that the defendant be given a full opportunity to prepare his defence, to cross examine witnesses against him, and to call his own witnesses.
51. The Supreme Court neither conducted a thorough analysis or examination of the decision made by the Chuy Regional Court nor provided a well-reasoned decision and simply dismissed all the arguments of the defense as irrelevant "as they already have been considered by the courts" and approved the decisions of the lower courts.

⁵¹ *Ibid.* para 64.

⁵² *Ibid.* para 67.

⁵³ *Ibid.* para 71.

⁵⁴ *Ibid.* para 44.

⁵⁵ *Ibid.* para. 58.

⁵⁶ *Ibid.* para 48.

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

52. We reiterate the original Communication and the Views. We would like to remind the Committee that the Views already noted that the findings of the medical forensic examinations conducted by independent experts were consistent with other evidence suggesting that Mr. Askarov had been subjected to acts of torture.⁵⁷ The Government did not take any steps—either as a separate procedure or as part of the retrial—to conduct a thorough investigation of whether Mr. Askarov had been tortured, or to identify and prosecute those responsible. Investigations described in the Government’s responses took place before the Committee issued its Views and the Committee already concluded that they did not constitute an effective investigation. The Committee noted that the inquiry that was conducted in 2013, while extensive, lacked the element of impartiality. The Government has not conducted any further investigation, and has not remedied any of the deficiencies in the original investigation that were identified by the Committee.
53. During the retrial, the Court failed to effectively examine the allegations of unlawful detention and torture of Mr. Askarov in detention, despite the retrial and the evidence presented. The Court repeatedly postponed consideration of Mr. Askarov’s claims of unlawful detention, torture and ill-treatment, despite the fact that the defense consistently raised the issues throughout the trial. This resulted in failure to examine these claims at the retrial.⁵⁸ Credible information was not used to investigate allegations of torture and to bring those responsible to account. By finding that Mr. Askarov’s testimony had been confirmed “by nothing and by no one,” the Court not only ignored the medical evidence of ill-treatment but also dismissed the clear findings of the Committee that Mr. Askarov had been a victim of torture, based on the bare assertion that the Committee had been confused and misled.⁵⁹

Failure to Provide Reparations, including Compensation to Mr. Askarov

54. A fundamental component of the system of human rights protection established by the ICCPR and the Optional Protocol is the obligation of States Parties to provide an effective remedy where violations are identified. Article 2(3) of the ICCPR requires that State Parties “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” The Committee also emphasizes this obligation in its General Comment 33, highlighting that “an effective and enforceable remedy” should be provided in case of a violation.⁶⁰ This right to a remedy is examined in detail in the *UN Basic Principles on the Right to Remedy*,⁶¹ which clarifies that “a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted.”⁶²

⁵⁷ HRC Views, Askarov. para. 8.2.

⁵⁸ International Commission of Jurists, 2019, para 63.

⁵⁹ *Ibid.* para 127.

⁶⁰ Human Rights Committee, General Comment 33 (CCPR/C/GC/33), The Obligation of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 5 November 2008, para. 14.

⁶¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“Basic Principles on the Right to Remedy”), adopted by the UN General Assembly on 16 December 2005, Resolution 60/147, Principle 15: “[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.”

⁶² *Ibid.*, Principle 9.

55. According to the UN Human Rights Committee's *Guidelines on measures of reparation under the Optional Protocol to the ICCPR*⁶³ when an individual communication reveals violations of ICCPR rights, the Committee sets out measures designed to make full reparation to the victims including, when appropriate, restitution, compensation, rehabilitation and measures of satisfaction.⁶⁴
56. *Guidelines on measures of reparation under the Optional Protocol to the ICCPR* emphasizes that the compensation should cover both material and moral (or non-material) harm.⁶⁵ The *UN Basic Principles on the Right to Remedy* provides that reparation should also cover moral damages or non-material loss as a result of the human rights violation. Moral damages are meant to compensate for harm, pain and suffering, including mental anguish, humiliation and a sense of injustice. In addition, the *Committee Against Torture in its General Comment No. 3*, emphasizes that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment.⁶⁶
57. *Guidelines on measures of reparation under the Optional Protocol to the ICCPR* provide, when appropriate, that the reparation should include measures of satisfaction. This includes for example, a public apology, particularly in cases of grave or systematic violations where the injury cannot be fully redressed by restitution or compensation only. *The Committee Against Torture in its Comment No.3* also emphasizes that satisfaction may include verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim and the victim's relatives; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; as well as public apologies, including acknowledgement of the facts and acceptance of responsibility.⁶⁷
58. The Committee in its Views on this case specified that the Government was required to provide full reparations including appropriate compensation as part of the effective remedy. The Government failed to give effect to this requirement, as Mr. Askarov has not been provided with any compensation for the torture or any other violation that he suffered. Instead, the Government, in its previous comments, stated that Mr. Askarov first needed to be acquitted, and the alleged perpetrators of torture convicted, for the compensation to be considered. Requiring the victim to seek compensation for violations of rights through a judicial process creates a heavy burden for survivors, in violation of established jurisprudence of the Committee.
59. In addition, Mr. Askarov's and his family's mental injury and suffering, as well as damage to their reputation and dignity remain without remedy. The government of Kyrgyzstan neither provided an official declaration or judicial decision restoring the dignity, the reputation and the rights of Mr.

⁶³ Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/158, 30 November 2016, para 2.

⁶⁴ See the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147.

⁶⁵ Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/158, 30 November 2016, para 10.

⁶⁶ Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties, 13 December 2012, para 9.

⁶⁷ Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties, 13 December 2012, para 16.

Askarov and his family; nor acknowledged the facts, accepted its responsibility or apologized publicly.

Failure to Introduce Safeguards against Torture in Detention

60. According to the UN Human Rights Committee's *Guidelines on measures of reparation under the Optional Protocol to the ICCPR*,⁶⁸ when an individual communication reveals violations of ICCPR rights, the Committee sets out measures designed to make full reparation to the victims, as well as measures aimed at preventing the reoccurrence of similar violations in the future (guarantees of non-repetition).⁶⁹ Guarantees of non-repetition are general in scope and are essential in order to prevent subsequent human rights violations of the type that gave rise to the communication considered by the Committee.
61. The Committee in its Views on this case, in addition to the obligation to investigate and provide redress for the torture of Mr. Askarov, reminded the State that it is obliged to take steps to prevent similar violations in the future⁷⁰. The Government has already recognized the need for many of these safeguards in its National Plan of Action on Prevention of Torture, which was adopted on 23 October 2014 and which aims to provide certain safeguards against torture;⁷¹ in particular points 10 (medical examinations), 13 (detention rules must ensure safety and humane treatment), 15 (provision for anonymous complaints and impartial investigations), 24 (education of staff and independent investigation unit), and 30 (specialized unit to investigate torture). There remains a substantial gap between the legislative and policy framework and its practical implementation. The UN Committee against Torture has expressed concern regarding the persistent failure to conduct prompt, impartial, and full investigations into the many allegations of torture and ill-treatment as well as the failure to prosecute alleged perpetrators, and has also expressed concern regarding barriers at the pre-investigation stage that prevent effective forensic medical examinations. As part of the implementation of Views in this case, the Committee should encourage the Government to fully implement its commitments in the National Plan of Action, and to take into account the views and opinions of practitioners, NGOs, and National Human Rights Institutions in this process.
62. Further specific safeguards against future torture in police stations should be introduced as follows.
 1. *Effective and Independent Oversight of Police Stations and Other Places of Pre-Trial Detention.*
63. The UN Special Rapporteur on Torture has identified regular visits by independent monitoring bodies with access to all places of deprivation of liberty as "the most innovative and effective means" of preventing torture and responding to allegations of ill-treatment in detention and police custody. An independent body to monitor and oversee detention facilities is also required by the UN Standard Minimum Rules for Treatment of Prisoners and the Body of Principles for the Protection of All Persons Under Detention. A key step in the Kyrgyz Republic will be to ensure that the National Preventive Mechanism (NPM) has prompt and unlimited access to all places of detention, private interviews with detainees, and must exercise the right to carry out unannounced visits. During their

⁶⁸ Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/158, 30 November 2016, para 2.

⁶⁹ See the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147.

⁷⁰ HRC Views, Askarov, para.10.

⁷¹ The National Plan of Action is accessible (in Russian) here: <http://cbd.minjust.gov.kg/act/view/ru-ru/214065>.

visits, members of the monitoring bodies should be able to move freely within the places of detention, and have access to all physical spaces. The Kyrgyz authorities should also facilitate independent monitoring of police stations and pre-trial detention centers by granting access to civil society organizations such as human rights NGOs, the Ombudsman's office, and others.

2. *Improved Police Training.*

64. The Kyrgyz Republic must train all law enforcement personnel on the human rights standards applicable to vulnerable detainees, as recognized by Point 24 of the National Plan of Action on Prevention of Torture. In its Code of Criminal Procedure, the Kyrgyz Republic recognizes that all agencies and individuals participating in criminal proceedings must respect human rights. In order to translate this principle into practice, the Ministry of Interior must incorporate human rights standards into all educational and training materials for law enforcement personnel involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment. This should cover the positive obligation to protect detainees from harm and from any dangers to their life, including identifying detainees that need to be put in protective custody if there is a risk to life from criminal acts of a third party, as well as the standards for conditions of detention. The training should ensure that all law enforcement personnel are fully aware of their obligations under human rights law, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted.

3. *Independent Medical and Forensic Services.*

65. The Kyrgyz Republic must proactively ensure that medical examination services are formally and functionally independent of the police and the penitentiary system. The Istanbul Protocol requires that medical investigations are carried out by impartial experts. The importance of independent medical attention has already been recognized in the context of detainees in Point 10 of the National Plan of Action on Prevention of Torture. Such medication examinations must conform to established standards of medical practice and be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials. An important step in this regard would be to ensure that all medical personnel at detention facilities, as well as forensic examiners, should be employed by the Ministry of Health, and not accountable to the Ministry of Interior or the State Service for the Execution of Punishment. The Ministry of Health has developed and adopted guidelines on the documentation of torture and other types of violence, based on the Istanbul Protocol standards, which will facilitate effective and independent examination and recording of evidence of torture. The United Nations Special Rapporteur on Torture has recommended that state forensic medical services should not have a monopoly on expert forensic evidence. The Kyrgyz Government should thus also support introduction of an independent medical examination institution, facilitate the de-monopolization of state-controlled forensic services, and ensure that independent forensic reports are given the same consideration and weight during legal proceedings as State-commissioned reports.

Failure to Publish the Views

66. Finally, according to the UN Human Rights Committee's *Guidelines on measures of reparation under the Optional Protocol to the ICCPR*,⁷² when an individual communication reveals violations of ICCPR rights, the Committee requests States parties to publish the Committee's Views in each case and, when appropriate, specifies the language or languages in which the Views should be published.⁷³
67. The Committee in its Views on this case, requested that the Government publish the Committee's Views.⁷⁴ The Government has failed to do so. The Committee should continue to urge the Government to publish the Views of the Committee in this case. Publication and broad dissemination of UN Treaty Body Views are an important step to ensure that citizens in the Kyrgyz Republic are aware of their rights, and that the possibility of submitting a communication to the Committee exists in the event those rights are violated. Broad and public dissemination also reinforces to police officers and other state agents that the Government will not accept torture in detention.
68. The Views of the Committee should be made available in both Kyrgyz and in Russian on official government websites, including the Ministry of Interior, the Prosecutor General's office, the Ministry of Justice, and the Ministry of Foreign Affairs. . In addition, the Government should ensure that the key findings of the Committee and the steps that it requests the Government take to implement those Views are disseminated in major newspapers and other media outlets with broad circulation.

B. Failure to Protect the Right to Life and Health of Mr. Askarov in Detention

69. In 2016, the Committee in its Views, noted that "the State party is under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with the rule 24 of the Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules)."⁷⁵ However, Kyrgyzstan failed to take necessary measures to protect the right to health and life of Mr. Askarov in detention and did not provide him timely, adequate access to medical care, which resulted in his death. His death is attributable to the failure by government to acknowledge his situation and take appropriate action.

Failure to Release Mr. Askarov in the Context of the COVID-19 Pandemic

70. Prisoners are among the groups most vulnerable to COVID-19⁷⁶ given the overcrowding that characterizes a large number of prisons, the difficulty of securing physical distance, the often poor

⁷² Human Rights Committee, *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR/C/158, 30 November 2016, para 3.

⁷³ General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution 60/147, 16 December 2005, para 3.

⁷⁴ HRC Views, Askarov, para.11.

⁷⁵ HRC Views, Askarov, para. 8.5.

Also see the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 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, revised by the United Nations General Assembly (A/Res/70/175) on 17 December 2015.

⁷⁶ Open Society Justice Initiative, "The Right to Health Care in Prison during the COVID-19 Pandemic", Briefing Paper (July 2020) <https://www.justiceinitiative.org/uploads/7696dcfd-12e1-4ace-8f28-2a37f4a3c26b/brief-access-to-health-care-in-prisons-07082020.pdf>

conditions of detention and poor ventilation in prisons, and the significant number of prisoners in vulnerable health situations.⁷⁷ Accordingly, several intergovernmental organizations (IGOs) and medical experts have called for substantial measures to protect prisoners from being infected, including early, provisional, or temporary release of prisoners who are most at risk. These IGOs include the WHO as well as law enforcement bodies (the UNODC) and human rights and humanitarian organizations (OCHA, OHCHR, the UN Subcommittee on the Prevention of Torture, the European Committee for the prevention of torture, the Inter-American Commission on Human Rights).⁷⁸

71. Factors that increase the risk of developing serious complications from COVID-19 include underlying health conditions including heart disease, hypertension, and respiratory issues, all of which Mr. Askarov suffered from, according to his medical report dated 17 January 2020.⁷⁹ People with these conditions over the age of 65 are at higher risk, and the risk increases with advancing age.
72. According to the recent expert opinion of Yale University, Stanford University, and the Oswaldo Cruz Foundation “[r]eleasing older inmates, inmates with underlying medical conditions, and inmates with disabilities and who are at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19 due to their disability or any medical treatment necessary to treat their disability is even more critical. Such individuals are by definition at greater risk if they remain incarcerated under conditions necessarily present in any detention setting.”⁸⁰
73. Mr. Askarov was 69 years old when he died. He was already suffering from poor health that had not been properly treated since his arrest, which had resulted in the exponential decline of his health. According to his most recent medical report dated 17 January 2020, Mr. Askarov was suffering from, among other conditions, heart disease, hypertension, respiratory issues, fever and neurological irregularities.
74. Because of his age, his prolonged prison sentence, and his underlying health conditions, he was among those at greatest risk of severe illness or death from COVID-19. Soon after the WHO declared COVID-19 a pandemic and Kyrgyzstan confirmed its first cases, many international organizations started to express their concerns and repeatedly called upon the Kyrgyz authorities to urgently release Mr. Askarov on humanitarian grounds as he was among those at greatest risk of severe illness or

⁷⁷ World Health Organization, Regional Office for Europe, [Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance](#), 15 March 2020, p. 1-2. Open Society Justice Initiative, [Pretrial Detention and Health: Unintended consequences, deadly results. A global campaign for pretrial justice report](#), 2011, 82 pages.

⁷⁸ United Nations Office on Drugs and Crime, [COVID-19 preparedness and responses in prison](#), 31 March 2020, p.1. Inter-Agency Standing Committee, developed by OHCHR and WHO, [Interim Guidance COVID-19: Focus on persons deprived of their liberty](#), March 2020, p. 3. Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment, [Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic](#), Adopted on 25th March 2020, section II.9.(2). European Committee for the prevention of torture and inhuman or degrading treatment or punishment, [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#), Issued on 20 March 2020, para. 5. Inter-American Commission on Human Rights, [Resolution I/20. “Pandemic and Human Rights in the Americas.”](#) Adopted on 10 April 2020, para. 45-46.

⁷⁹ See Centers for Disease Control and Prevention, [Coronavirus Disease 2019 \(COVID-19\): People Who May Be at Higher Risk](#), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last accessed May 27, 2020).

⁸⁰ Expert Opinion of Yale, Stanford, and the Oswaldo Cruz Foundation (FIOCRUZ) (English) para 64., Defensoria Publica and Ministerio Publico in Rio de Janeiro vs. State of Rio de Janeiro <https://www.justiceinitiative.org/uploads/9d8e1658-c4a9-4da2-8548-83490de79b1a/expert-opinion-medical-en-06202020.pdf>

death from COVID-19.⁸¹ However despite the repeated calls, the Kyrgyz authorities did not release Mr. Askarov.

75. Kyrgyz authorities disregarded both Mr. Askarov’s own long-term respiratory and vascular problems and the ongoing COVID-19 outbreak. By wrongfully keeping Mr. Askarov in detention, they exposed him to a significant risk of contracting COVID-19, which, given his age and state of health, was fatal. “Double pneumonia” is what was registered as Mr. Askarov’s official cause of death. Yet, in July 2020, Kyrgyzstan began merging its figures on pneumonia infections—which have surged intensely this year and unusually during summer—with those for COVID-19 - an admission that the two outbreaks are strongly correlated and that it is therefore reasonable to conclude that Mr. Askarov died of COVID-19.⁸² Regardless, the evidence shows that Mr. Askarov’s death would have been preventable had the government released him in good time in accordance with this Committee’s recommendations or provided him with appropriate, timely and adequate medical intervention.

Failure to Provide Adequate Access to Medical Care

76. The right to health is a fundamental right and every person is entitled to “the highest attainable standard of health conducive to living a life in dignity.”⁸³ Access to health care is also internationally recognized as a fundamental right for prisoners by the United Nations (Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners),⁸⁴ the Inter-American Commission on Human Rights (Principle X of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas),⁸⁵ the Council of Europe (Rule 39 of the European Prison Rules),⁸⁶ and the African Commission on Human and Peoples’ Rights (Articles 20 and 31 of the Guidelines and Measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment and punishment in Africa).⁸⁷ States are responsible for providing health care to prisoners, and have a duty to ensure the health and well-being of persons deprived of their liberty.⁸⁸
77. The right to health care in prison derives also from the right to life.⁸⁹ Authorities are under an obligation to account for the treatment of people deprived of their liberty and must take appropriate

⁸¹ See the section “F. International Calls for the Release of Mr. Askarov on Humanitarian Grounds Considering his Deteriorating Health Condition and the COVID-19 pandemic”, para. 20-23.

⁸² In July, Kyrgyzstan began merging its figures on pneumonia infections, which have surged intensely in 2020, with those for coronavirus – an admission that the two outbreaks were strongly correlated. See Almaz Kumenov, Ayzirek Imanaliyeva “Pneumonia fudge hiding scale of Central Asia’s coronavirus emergency” Eurasianet (16 July 2020) <https://eurasianet.org/pneumonia-fudge-hiding-scale-of-central-asias-coronavirus-emergency>

⁸³ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000 U.N. Doc. E/C.12/2000/4, para. 1. See also *Hernández v. Argentina*, IACtHR, Judgment of 22 November 2019, para. 76.

⁸⁴ The Nelson Mandela Rules, Rule 24.1.

⁸⁵ Inter-American Commission on Human rights (IACHR), *Resolution 1/08. Principles and best practices on the protection of persons deprived of liberty in the Americas*, Adopted during the 131st regular period of sessions, March 3-14 2008, OEA/Ser/L/V/II.131 doc. 26, Principle X.

⁸⁶ European Prison Rules, Rule 39.

⁸⁷ African Commission on Human and Peoples’ Rights, The Robben Island Guidelines, articles 20 and 31.

⁸⁸ United Nations, Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the right to life*, 30 October 2018, CCPR/C/GC/36, para. 25. *Díaz Peña v. Venezuela*, IACtHR, Judgment of 26 June 2012, para. 135.

⁸⁹ Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 4 of the American Convention on Human Rights (ACHR). Article 2 of the European Convention on Human Rights (ECHR). Article 4 of the African Charter on Human and Peoples’ Rights.

steps to safeguard the lives of those within their jurisdiction.⁹⁰ These obligations are especially pertinent with respect to prisoners, who are entirely under the control of the authorities and are in a particularly vulnerable position.⁹¹

78. Therefore, in the context of COVID-19 pandemic, as part of their obligation to protect the right to life and the right to access health care of prisoners, States must adopt relevant measures to protect prisoners from COVID-19. These measures are not limited to treatment of prisoners but also include access to preventive medicine and adequate sanitary conditions. However, Kyrgyzstan failed to provide adequate access to medical care for Mr. Askarov and to protect his health, which resulted in his death.
79. Mr. Askarov and his lawyer urgently started asking for medical attention in March, joined by calls from international organizations. His requests for medical help increased in early July when his COVID-19-like symptoms started. The prison authorities first recorded his request for medical help on 9 July 2020,⁹² and he died on 25 July 2020 at penal colony No. 47 where he was transferred the day before for medical treatment. During this period, despite repeated calls, Kyrgyz authorities neither provided him with the urgent medical assistance required nor transferred him to a well-equipped medical facility.
80. Mr. Askarov's family was informed about his situation only on 20 July 2020, when the fact that he was seriously ill became known by the public. The State Penitentiary Service of Kyrgyzstan constantly denied that Mr. Askarov's health was deteriorating and that he was in critical condition. They also claimed that there was not a single case of pneumonia or COVID-19 recorded in prisons and that everything was under control, evidence that the authorities were trying to minimize a dire situation.⁹³
81. In the context of the COVID-19 pandemic, prisoners should have access to testing as soon as they present symptoms. According to the WHO, "efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control measures, adequate testing, treatment and care are not carried out in prisons and other places of detention as well."⁹⁴ States must ensure "widespread access to testing...for detainees...[and] prison personnel,"⁹⁵ and should perceive both prisoners and staff as priority categories for testing. "Double pneumonia" has been cited as Mr. Askarov's cause of death, but he was seriously ill showing COVID-19-like symptoms for approximately two weeks. However, despite the recent surge of COVID-19 cases and "community-acquired pneumonia" in Kyrgyzstan, the State Penitentiary Service refused to test him or other prisoners for COVID-19.

⁹⁰ *Carabulea v. Romania*, ECtHR, Judgment of 10 July 2010, para. 108. See also: *Ghimp and others v. The Republic of Moldova*, ECtHR, Judgment of 30 October 2012, para. 41. *J. v. Perú*, IACtHR, Judgment of 27 November 2013, para. 372. *Chinchilla Sandoval et al. v. Guatemala*, IACtHR, 29 February 2016, para. 170-171.

⁹¹ *Slimani v. France*, ECtHR, Judgment of 27 October 2004, para. 27. See also: *Lykova v. Russia*, ECtHR, Judgment of 22 December 2015, para. 114. *Lysias Fleury et Al. v. Haiti*, IACtHR, Judgment of 23 November 2011, para. 84

⁹² See the statement of the State Penitentiary Service of Kyrgyzstan in Russian: <http://gsin.gov.kg/certainnews/157>

⁹³ Клоор, Айдай Токоева, "Правозащитники попросили освободить Аскарлова из-за ухудшения здоровья. ГСИН утверждает, что «все под контролем» (10 July 2020)

<https://kloop.kg/blog/2020/07/10/pravozashhitniki-poprosili-osvobodit-askarova-iz-za-uhudsheniya-zdorovya-gsin-utverzhaet-cto-vse-pod-kontrolem/>

⁹⁴ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 1.

⁹⁵ Spokesperson for the UN High Commissioner for Human Rights, *Press briefing note on Americas / Prison conditions*, 5 May 2020.

According to the management of the prison, none of the prisoners of penal colony No. 19 have been tested for COVID-19 as “the convicts practically do not contact anyone”. The head of the prisoner’s medical unit added that the prison did not have the equipment to test prisoners, nor did they have sufficient medication,⁹⁶ and therefore only prison staff had been tested when necessary.⁹⁷

82. International law underscores that all prisoners should have prompt access to the medical care necessitated by their state of health without undue delay⁹⁸, in conditions similar to those in the outside community.⁹⁹ However, when the representatives from the office of the Ombudsman visited Mr. Askarov in prison on 16 July 2020, they reported that they were not concerned about his situation, despite Mr. Askarov telling them that he had a high temperature for several days, and was feeling achy, had no appetite and had trouble swallowing. Additionally, according to the representatives, Mr. Askarov received only glucose injections, vitamin supplements and treatment for his fever until he was transferred to the prison medical facility on 24 July.
83. International law also makes clear that if the health of a prisoner requires his or her transfer to a hospital, they must be transported with the promptness and in the manner required by their state of health.¹⁰⁰ In the case of Mr. Askarov, it was only on 24 July 2020, two days after his lawyer managed to visit him and reported his critical condition, that he was finally transferred to a prison medical facility for treatment. He should have been transferred to a regular hospital much earlier, when he started showing symptoms of possible COVID-19.

IV. REQUESTS

84. In light of the submissions above, along with those made in the original Communication, we respectfully request that the Committee consider the Views as not implemented and continue its dialogue with Kyrgyzstan to achieve the following ends:
- a) Kyrgyzstan should quash Mr. Askarov’s conviction and publish an official declaration to restore the dignity, the reputation and the rights of Mr. Askarov and of persons closely connected with him, including his family.
 - b) Kyrgyzstan should provide an effective remedy to Mr. Askarov’s family regarding the torture of Mr. Askarov. This remedy should include an impartial, effective, and thorough investigation into the circumstances of his torture, including the identification and punishment of those responsible. It should also include full reparation, including appropriate compensation to be paid immediately to Mr. Askarov’s family.

⁹⁶ See urgent appeal launched by Front Line Defenders on 22 July 2020, available at: https://www.frontlinedefenders.org/sites/default/files/kyrgyzstan_-_ua_azimjan_askarov_-_22_jul_2020.pdf

⁹⁷ See Fergana Agency, Состояние Азимжана Аскарова в колонии резко ухудшилось (27 July 2020) <https://fergana.agency/news/120423/?country=kg>

⁹⁸ *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, para. 34. The Nelson Mandela rules, Rule 27.1. IACHR, *Principles and best practices on the protection of persons deprived of liberty in the Americas*, Principle X.

⁹⁹ The Nelson Mandela Rules, Rule 27.1. *De la Cruz-Flores v. Peru*, IACtHR, Judgment of 18 November 2004, (Series C) No. 115, para. 132. *Ivko v. Russia*, ECtHR, Judgment of 15 December 2015, para. 94.

¹⁰⁰ The Nelson Mandela Rules, Rule 27.1. *Hernández v. Argentina*, IACtHR, Judgment of 22 November 2019, para. 88. *Raffray Taddei v. France*, ECtHR, Judgment of 21 December 2010, para. 63. *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, para. 37.

- c) The Government of Kyrgyzstan, in order to comply with its obligation to prevent similar violations in the future, should implement appropriate safeguards against torture in detention. Such safeguards should include, in particular, effective and independent oversight of police stations and other sites of pre-trial detention, strengthened independence of medical and forensic services, reform of police performance criteria, and improved police training (including concerning the rights of minorities). As the Committee on the Elimination of Racial Discrimination stated in its general recommendation No. 31 (2005), States parties should “develop, through appropriate education programs, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials”¹⁰¹ and also “promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice.”¹⁰²
- d) Kyrgyzstan should publish the Committee’s Views issued in 2016.
85. We also respectfully request that the Committee remind Kyrgyzstan of its duty to conduct an effective and impartial investigation into the circumstances and causes of Mr. Askarov’s death. This investigation must ascertain the cause of death, the facts leading up to the death, whether the death might have been prevented, and if yes it must be capable of identifying and punishing those responsible; and of determining lessons to be learned in order to prevent similar lethal incidents.
86. Finally, we ask the Committee to remind the Government of Kyrgyzstan that in order to comply with its obligation to prevent similar deaths in prison, it should also immediately take measures to protect the life and health of prisoners during the COVID-19 pandemic. This is not limited to treatment, but includes access to adequate sanitary conditions and preventive medicine. In particular, in the context of COVID-19 pandemic, prison administrations should ensure that prisoners have access to testing as soon as they present symptoms and consider proactive and systematic testing of all prisoners (at least the newly arrived prisoners) to detect outbreaks early¹⁰³.
87. We thank the Committee for its attention to this matter and remain at the Committee’s disposal for further information or questions.

14 October 2020

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¹⁰¹ UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the 5th to the 7th periodic reports of Kyrgyzstan, adopted by the Committee at its 82nd session, 11 February-1 March 2013 : Committee on the Elimination of Racial Discrimination*, 19 April 2013, CERD/C/KGZ/CO/5-7, available at <https://www.refworld.org/docid/51ee4d1d4.html> (accessed 11 May 2020).

¹⁰² *Ibid.*, para. 6.

¹⁰³ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 15 March 2020, p. 14.