



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13 - 31 March 2006

VIEWS

Communication No. 1208/2003

<u>Submitted by:</u>	Bakhrudin Kurbonov (not represented by counsel)
<u>Alleged victim:</u>	Dzhaloliddin Kurbonov, the author's son
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	17 June 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 October 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	16 March 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Torture, unfair trial

Substantive issues: Level of substantiation of claim

Procedural issues: Failure of State party to cooperate

Articles of the Covenant: 7, 9, 10, 14 (1) and (3) (e) and (g)

Articles of the Optional Protocol: 2

On 16 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1208/2003. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant on Civil and Political Rights

eighty-sixth session

concerning

Communication No. 1208/2003*

<u>Submitted by:</u>	Bakhrudin Kurbonov (not represented by counsel)
<u>Alleged victim:</u>	Dzhaloliddin Kurbonov, the author's son
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	17 June 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 16 March 2006

Having concluded its consideration of communication No. 1208/2003, submitted to the Human Rights Committee by Bakhrudin Kurbonov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author is Mr. Bakhrudin Kurbonov, a Tajik national born in 1941, who submits the communication on behalf of his son, Dzhaloliddin Kurbonov, also a Tajik, born in 1975, at present imprisoned in Dushanbe. He claims that his son is a victim of violation by Tajikistan of his rights under articles 7; 9, paragraphs 1 and 2; 10; and 14, paragraphs 1 and 3 (e) and (g), of the International Covenant on Civil and Political Rights. He is not represented by counsel.

Factual background

2.1 On 15 January 2001, the author's son was arrested and brought to the Operational Search Unit, Criminal Investigation Department, Ministry of Internal Affairs. The police officers allegedly intended to force him to confess guilt in the murder of two policemen. When they were unable to implicate him in the murder, they accused him of committing three robberies. He was detained until 6 February 2001, and allegedly spent 15 days handcuffed to the radiators in police offices. During this time he allegedly was systematically subjected to torture, in form of beatings and electric shocks. He was told that if he did not confess guilt, his relatives would experience "serious problems" and would be "tortured"; indeed, at one stage he learned that one of his brothers had been arrested, although he was subsequently released. The author's son did not confess, however, and was released on 6 February 2001.

2.2 The author complained about his son's mistreatment to the Prosecutor's Office and to the Ministry of Internal Affairs, following which an investigation was launched, and the policemen responsible were subjected to disciplinary measures and prosecuted. The author presents a copy of an order signed by the Deputy Minister of Internal Affairs on 10 May 2001, on the disciplining of five police officers in this regard (for "unfounded arrest and bringing to the Criminal Search Department", "unlawful detention", "unlawful search"). From this document, it transpires that the author's son was detained on 15 January and was obliged, "under pressure", to confess his participation in three robberies that took place in 1996-98. Criminal charges against him were filed only on 31 January 2001; the case was closed for lack of evidence on 28 February 2001. According to the order, no registry book existed for individuals brought to the premises of the Criminal Search Department and no record of the author's son's detention was produced, in violation of the requirements of the State party's Criminal Code.

2.3 However, the police officers who had previously tortured his son, thereafter, and together with other policemen, began to intimidate the author, his son and their family. On 15 August 2001, one of the author's nephews was beaten; on 31 August, the author's brother and father were beaten up by 12 policemen, some of whom were masked; on 16 September, the author and another of his sons were beaten by policemen during an unlawful search of their home. On 15 October 2001, the author's two sons were both severely beaten by policemen and sustained head injuries (a copy of a forensic medical examination of 18 October 2001 is provided; according to the conclusion of the expert, their injuries could have been the result of blows with a blunt object). Allegedly, these acts were designed to make the author withdraw his complaints against the police officers concerned. However, the author refused to do so.

2.4 On 28 November 2002, the author's son was again arrested in connection with the three robberies. He allegedly was again subjected to torture, and this time he was unable to withstand it, he confessed to the robberies as requested by the police. It was stressed that if he did not stand by his confession, the police would shoot him, on the pretext of preventing his escape. The author notes that his son was not provided with a lawyer until mid December 2002.

2.5 On 7 April 2003, the Criminal Chamber of the Supreme Court, acting as a first instance jurisdiction, found the author's son guilty of the robberies and sentenced him to nine years' imprisonment. The author submits that the trial was unfair and biased. Defence witnesses were not examined in court. The author's son retracted his confession obtained under torture during the preliminary investigation, but the court considered that this was a defence strategy and dismissed his claim of torture on the grounds that (a) the policeman said to be responsible denied in court that he had committed torture, and (b) because during the trial, the author's son "did not present (to the court) any unquestionable evidence that he was beaten by [these] police officers"; it also refused to take into account the fact that the police officers were disciplined for the unlawful and groundless detention of the author's son with use of illicit methods against him, declaring that the signature on the copy of the deputy Minister of Interior's Order was illegible. An appeal to the Supreme Court's Appellate Chamber was dismissed on 3 June 2003, without examining the claims of torture and the reversal of the burden of proof, in the first instance judgement of 7 April 2003.

The complaint

3.1 The author claims that his son was subjected to torture and forced to provide a confession, in violation of articles 7 and 14, paragraph 3 (g), of the Covenant.

3.2 According to him, his son's rights under article 9, paragraphs 1 and 2, were violated, because his son was detained unlawfully, and for a prolonged period he was not formally charged with any offence.

3.3 The author claims that, by being subjected to threats that his family would face "serious problems" and would be "tortured", his son suffered treatment incompatible with the State party's obligations under article 10 of the Covenant.

3.4 Finally, it is submitted that the trial court in Kurbonov's case was not impartial, in violation of article 14, paragraph 1, and its refusal to allow him to examine certain witnesses gave rise to a violation of article 14, paragraph 3 (e), of the Covenant.

State party's failure to cooperate

4. By Notes Verbales of 22 October 2003, 22 November 2005, and 12 December 2005, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that under the Optional Protocol,

the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2 (a), of the Optional Protocol.

5.3 In relation to the author's claim under article 14, paragraph 3 (e), of the Covenant, that his son was denied the right to have certain witnesses on his behalf examined in court, the Committee notes that the author has neither provided the identity of such potential witnesses, nor explained the relevance of their possible statements; furthermore, no explanation was given as to why the court considered they did not need to be examined. In the circumstances, the Committee considers that the author has failed sufficiently to substantiate this claim. for purposes of admissibility. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 The Committee considers that the author's remaining claims under articles 7; 9, 10; and 14, paragraphs 1 and 3 (g), of the Covenant, to be sufficiently substantiated for purposes of admissibility, and proceeds to their consideration on the merits.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

6.2 The author has claimed that in January and November/December 2001, while in detention, his son was beaten and subjected to torture, by policemen, to force him to confess guilt in different crimes. Following the author's complaint about his son's unlawful detention, beatings and torture sustained in January 2001, the deputy Minister of Interior disciplined those responsible. In reprisal, the author and his family were pressured by police officers to revoke their claims in this regard, and were beaten and intimidated on several occasions; his son was also beaten during a wedding in October 2001, which was confirmed by a forensic medical certificate.

6.3 In court, the author's son retracted his confession because it had been obtained under torture. On 7 April 2003, the Criminal Chamber of the Supreme Court dismissed his claim on the ground that in court, the policemen suspected of having tortured him denied any wrongdoing, and because the author's son "did not present to the court any unquestionable evidence that he was beaten by [the] police officers". The court did not take into account that those policemen were cautioned afterwards for their unlawful acts (paragraph 2.2 above), holding that the signature on the copy of the order confirming their sanctions was illegible. On appeal, the court did not address these claims. The Committee notes that the above claims relate primarily to the evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice.¹ In the present case, the facts presented by the author clearly demonstrate that the Supreme Court acted in a biased and arbitrary manner with respect to the complaints related to the author's son's torture during the preliminary detention, because of the summary and unreasoned rejection of the evidence, properly and clearly documented by the author, that he had been tortured. In their effect, the action of the courts placed the burden of proof on the author, whereas the general principle is that the burden of proof that the confession was made without duress is on the prosecution. The Committee concludes that the treatment of Mr. Kurbonov during his preliminary detention, and the manner the courts addressed his subsequent claims to this effect, amounts to a violation of article 7 and of article 14, paragraph 1, of the Covenant. In light of this finding, the Committee considers unnecessary separately to examine the claim made under article 10.

6.4 In light of the above finding, the Committee concludes that the author's son's rights under article 14, paragraph 3 (g), have also been violated, as he was compelled to confess guilt to a crime.

6.5 The author has further claimed that his son was unlawfully arrested on 15 January 2001 and released on 6 February 2001, after 21 days of detention without having either his arrest or detention registered, nor having been promptly informed of the charges against him. An "official" criminal charge against him for robbery was only filed on 31 January 2001, and was subsequently dismissed on 28 February 2001 because of lack of evidence. The Committee also recalls that police officers were disciplined for having brought the author's son unlawfully to the Criminal Search Department of the Ministry of Interior, having groundlessly detained him there for 21 days without official record, and having opened a groundless criminal case against him. In the circumstances, the Committee considers that the facts before it disclose a violation of the author's son's rights under article 9, paragraphs 1 and 2, of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; and 14, paragraphs 1 and 3 (g), of the Covenant.

¹ See Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Kurbonov with an effective remedy, which should include a retrial with the guarantees enshrined in the Covenant or immediate release, as well as adequate reparation. The State party is also under an obligation to prevent similar violations in the future.

9. Bearing in mind that, by becoming a 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
