

Ernazarov v. the Kyrgyz Republic

*Communication to the
United Nations Human Rights Committee*

March 2011

Communication to the United Nations Human Rights Committee

In the case of

Mamatkarim Kuranbekovich ERNAZAROV

against

the Kyrgyz Republic

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

to

The United Nations Human Rights Committee
c/o Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 avenue de la Paix
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Switzerland

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TABLE OF CONTENTS

I. THE AUTHOR	5
II. THE VICTIM (DECEASED).....	5
III. LEGAL REPRESENTATIVES OF THE AUTHOR	5
IV. STATE PARTY	5
V. SUMMARY OF THE CLAIM	6
SUMMARY OF THE FACTS.....	6
VIOLATIONS OF THE ICCPR	6
SUMMARY OF DOMESTIC REMEDIES EXHAUSTED.....	7
VI. FACTS OF THE CLAIM.....	7
BACKGROUND: RAKHMONBERDI ERNAZAROV	7
DETENTION AND DEATH OF MR. ERNAZAROV.....	8
<i>Allegations of Forced Sodomy</i>	<i>8</i>
<i>Mr. Ernazarov's Detention</i>	<i>8</i>
<i>Physical and Psychological Abuse While in Detention.....</i>	<i>9</i>
<i>Death of Mr. Ernazarov in Detention</i>	<i>10</i>
AUTOPSY OF 20 NOVEMBER 2005	10
<i>Official Autopsy Report.....</i>	<i>10</i>
<i>Independent Evaluation by Physicians for Human Rights.....</i>	<i>12</i>
OFFICIAL INVESTIGATIONS INTO MR. ERNAZAROV'S DEATH.....	13
<i>Examinations of Mr. Ernazarov's Cell</i>	<i>13</i>
<i>First Requests to the Prosecutor and to the Ministry of Internal Affairs</i>	<i>14</i>
<i>Second Submission to the Prosecutor</i>	<i>14</i>
<i>Results of Internal Check by the Ministry of Internal Affairs</i>	<i>14</i>
<i>Second Request to the Ministry of Internal Affairs</i>	<i>15</i>
<i>Third Submission to the Prosecutor.....</i>	<i>15</i>
<i>Forensic Review of Autopsy Results</i>	<i>15</i>
<i>Fourth, Fifth and Sixth Submissions to the Prosecutor and Petition by Member of Parliament</i>	<i>16</i>
<i>Suspension of the Investigation.....</i>	<i>16</i>
<i>Seventh Submission to the Prosecutor</i>	<i>17</i>
<i>Criminal Investigation Re-opened</i>	<i>17</i>
JUDICIAL CHALLENGES TO THE INVESTIGATION	18
<i>First Application – Osh City Court.....</i>	<i>18</i>
<i>Second Application – Osh City Court.....</i>	<i>19</i>
<i>First Appeal – Regional Court.....</i>	<i>20</i>
<i>Third Application – Osh City Court.....</i>	<i>20</i>
<i>Fourth Application – Osh City Court & Second Appeal – Regional Court</i>	<i>20</i>
<i>Appeal to the Supreme Court.....</i>	<i>21</i>
<i>Osh City Court's refusal to comply with the Supreme Court's ruling</i>	<i>21</i>
THE KYRGYZ LEGAL SYSTEM AND SYSTEMIC FAILURE TO INVESTIGATE ABUSES IN DETENTION	21
VII. ADMISSIBILITY	23
A. TEMPORAL JURISDICTION	23
B. NO OTHER INTERNATIONAL COMPLAINT	24
C. EXHAUSTION OF DOMESTIC REMEDIES	24
1. <i>The Author has exhausted domestic remedies.....</i>	<i>24</i>
2. <i>Any new criminal complaint would be unduly prolonged and ineffective.....</i>	<i>25</i>
3. <i>Other remedies are ineffective or unavailable in this case</i>	<i>27</i>
VIII. VIOLATIONS OF THE ICCPR.....	27

A. FAILURE TO PROTECT A VULNERABLE PRISONER: ARTICLE 6(1).....	28
B. ARBITRARY KILLING: ARTICLE 6(1)	30
C. TORTURE OF MR. ERNAZAROV: ARTICLE 7.....	32
D. FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION: ARTICLES 6(1) AND 7 WITH ARTICLE 2(3)	34
1. <i>Lack of independence and impartiality</i>	35
2. <i>Undue Delay in the Investigation</i>	37
3. <i>Inadequacy of the Investigation</i>	39
4. <i>No Opportunity for Participation by the Victim’s Family in the Investigation</i>	42
5. <i>Lack of Transparency of the Investigation</i>	44
6. <i>No Finding of Responsibility</i>	45
E. FAILURE TO PROVIDE REDRESS: ARTICLES 6(1) AND 7 WITH ARTICLE 2(3)	46
IX. REMEDIES	47
LIST OF SUPPORTING DOCUMENTS	49

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II. THE VICTIM (DECEASED)

Name: Ernazarov
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Nationality: Kyrgyz Republic
Date and place of birth: [REDACTED]; [REDACTED], [REDACTED], Jalal-Abad oblast, Kyrgyz Republic
Relationship to the author: Brother (deceased)

III. LEGAL REPRESENTATIVES OF THE AUTHOR

1. This claim is submitted by the Open Society Justice Initiative and Saidkamal Akhmedov who are appointed as legal representatives of the Author. A letter of authority is attached to this communication.¹
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IV. STATE PARTY

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

¹ This communication was prepared with substantial *pro bono* assistance from the New York office of Hogan Lovells, and also with research assistance from the Lowenstein Human Rights Project of Yale Law School.

V. SUMMARY OF THE CLAIM

Summary of the facts

4. On 20 November 2005, Mr. Rakhmonberdi Ernazarov, the brother of the Author of this complaint, was found in a 3-by-3 meter holding cell, with six other men, in a police station in the city of Osh, unconscious and bleeding profusely from numerous cut wounds. He had been detained since 4 November 2005 on charges of sexually assaulting the father of his girlfriend. At the time of his detention, Mr. Ernazarov was in sound physical and mental health. On 20 November, Mr. Ernazarov was taken by ambulance to the Osh Central Hospital and died shortly after his arrival from blood loss.
5. The facts indicate that, throughout the course of his confinement, Mr. Ernazarov had been subjected to abuse of a psychological and physical nature by the other men in his cell because of the allegations against him. The authorities were aware of the abuse, which amounted to torture or ill-treatment, and also of the risk it posed to his life, but did nothing to prevent, halt or punish it. He was particularly vulnerable because he was charged with a sexual offence against another man. A guard at the police station where he was held told the family lawyer, Mr. Akhmedov, that Mr. Ernazarov was the subject of constant insults, was forced to eat and sleep near the toilet, and that his dish and spoon were damaged by the other men in the cell to make it difficult for him to eat. When Mr. Ernazarov's sisters attempted to visit him they were told by the investigating officer in charge of his case that he was "better off dead."
6. The police conducted a perfunctory investigation into his death and concluded, in the face of evidence which suggested otherwise, that it was suicide. An independent evaluation of Mr. Ernazarov's autopsy report by Physicians for Human Rights indicated that it would be impossible to conclude that his death was suicide from the autopsy report and that several injuries detailed in the report are very unusual for a suicide and could indicate that Mr. Ernazarov was trying to defend himself. The police failed to carry out even the most rudimentary investigatory measures, in that they failed to seize important evidence, question key witnesses, undertake a proper autopsy, or investigate the circumstances by which a vulnerable prisoner was detained in such a way.

Violations of the ICCPR

7. The Kyrgyz Republic has violated the International Covenant on Civil and Political Rights as follows:
 - *A. Failure to protect a vulnerable prisoner.* The Kyrgyz Republic violated Article 6(1) of the ICCPR because it failed in its positive obligation to protect the right to life of a vulnerable prisoner, and failed to provide a plausible explanation for his death.
 - *B. Arbitrary Killing.* As the Kyrgyz Republic has failed to provide a plausible explanation for the custodial death of Mr. Ernazarov through an effective investigation, there is a presumption that he was arbitrarily killed, in violation of Article 6(1).
 - *C. Mr. Ernazarov was Tortured.* The Kyrgyz Republic violated Article 7 of the ICCPR because Mr. Ernazarov was subjected to physical and psychological abuse while in the custody of the Kyrgyz authorities, with the knowledge and complicity of its officials. This abuse amounted to torture in violation of Article 7.
 - *D. Failure to conduct an effective investigation.* The Kyrgyz Republic failed to conduct a prompt, impartial, thorough, and effective investigation in violation of its obligations under Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3) of ICCPR.

- *E. Failure to provide redress.* The Kyrgyz Republic failed to provide access to effective remedies including compensation and adequate reparation, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3).

Summary of domestic remedies exhausted

8. Mr. Ernazarov's family, through their lawyer Mr. Akhmedov, has exhausted all available and effective domestic procedures in an attempt to remedy the violations set out above. Between 29 November 2005 and 2 June 2006, the family lodged seven requests with the Public Prosecutor and a further two complaints with the Ministry of Internal Affairs relating to the investigation of Mr. Ernazarov's death. In these, the family requested information concerning the investigation, identified facts and circumstances that required further investigation and evidence that needed to be gathered, and protested against their exclusion from the investigation.
9. Subsequently, between 16 August 2006 and 10 February 2007, the family filed four applications before the Osh City Court and two appeals to the Regional Court, challenging the failure to investigate, without success. Ultimately, the family appealed to the Supreme Court of the Kyrgyz Republic. The Supreme Court returned the case to the City Court to make a decision. Despite this, on 13 March 2008 the City Court again refused to consider the substance of their claim.

VI. FACTS OF THE CLAIM

10. The following factual statement is based on partial access to the investigation file. The family was assisted by a lawyer, Mr. Akhmedov, in their attempt to uncover the circumstances surrounding Mr. Ernazarov's death. However, Mr. Akhmedov was only given access to part of the investigation file, and was only permitted to make copies of a few of the documents contained in it. Due to this limited access to the case file, the present submission relies heavily on the relevant facts as described in a statement by Mr. Akhmedov.

Background: Rakhmonberdi Ernazarov

11. Mr. Ernazarov's family members, friends, and fellow villagers held him in high esteem, considering him to be a devout Muslim, a hard worker, and an upstanding citizen.² After completing his mandatory military service in the former Soviet Army,³ he worked as a coal miner in Russia until 1995.⁴ From 1995 until his death, he raised cattle, grew tobacco, and videotaped weddings and other social ceremonies to support his family.⁵
12. In 1992, Mr. Ernazarov married his wife, Nasiba, and together they had three children.⁶ Until 2000, the whole family, including Mr. Ernazarov's mother, lived in ██████████ Village.⁷ Mr. Ernazarov and his wife separated in 2000, and Nasiba moved with their youngest child to her parents' home in ██████████ City, which is approximately 20 kilometers

² Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 8.

³ Exhibit 3: Photograph of Mr. Ernazarov taken in the 1980s while Mr. Ernazarov was serving in the Soviet military.

⁴ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 4.

⁵ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 6.

⁶ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 5; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 3; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 3.

⁷ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 5.

from ██████████ Village.⁸ The two older children — ages 8 and 12 at that time — stayed with Mr. Ernazarov and his mother.⁹

13. After some time, Mr. Ernazarov became romantically involved with a woman named Shoira Askarova. In the summer of 2005, Ms. Askarova moved into Mr. Ernazarov's home in ██████████ Village.¹⁰ In September 2005, however, Mr. Ernazarov learned that Shoira Askarova was having an affair with another man.¹¹ Because of this, Mr. Ernazarov asked her to leave his house, which she did in October 2005, returning to live with her parents in a village in the ██████████ District of the Osh Province.¹²

Detention and Death of Mr. Ernazarov

Allegations of Forced Sodomy

14. Around 4 November 2005, Mr. Askarov, the father of Ms. Shoira Askarova, filed a complaint with the police alleging that Mr. Ernazarov committed crimes against him, including an act of forced sodomy. According to the resulting police report, which the family of Mr. Ernazarov has yet to be provided, on 27 October 2005 Mr. Askarov had traveled to Mr. Ernazarov's home in an apparent attempt to resolve the dispute between Shoira Askarova and Mr. Ernazarov.¹³ According to the police report, Mr. Ernazarov allegedly committed an act of forced sodomy on Mr. Askarov and tried to extort money from him.¹⁴
15. Following Mr. Ernazarov's death, Mr. Askarov spoke with Mr. Ernazarov's sisters. At that time, Mr. Askarov complained only of verbal threats, and referred to these threats being made in the course of a telephone conversation, not a meeting.¹⁵

Mr. Ernazarov's Detention

16. On 4 November 2005, police officers acting on the complaint filed by Mr. Askarov arrested Mr. Ernazarov at his home in ██████████¹⁶ They took him to the Osh City Police Station located at 3 Bayalinov Street in Osh City, which is located in the Osh Province.¹⁷ It is not disputed that, at the time of his arrest, Mr. Ernazarov was in sound physical and mental health. The Police Station contains multiple detention cells on the lower ground level. The

⁸ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 5; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 3; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 3.

⁹ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 5.

¹⁰ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 7.

¹¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 9.

¹² Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 3.

¹³ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 9.

¹⁴ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 9.

¹⁵ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 4.

¹⁶ Exhibit 10: Report by Sub-Colonel Murzalimov dated November 4, 2005; Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 8; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 4.

¹⁷ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 8.

upper level houses investigators' offices and the guard room.¹⁸ Mr. Ernazarov was detained with six other cellmates in a 3-by-3 meter cell located on the lower ground floor.¹⁹

17. On 7 November 2005, three days after he was detained, Mr. Ernazarov was charged with violating Article 130, Item 4, Part 2 of the Criminal Code of the Kyrgyz Republic, which prohibits forced sodomy.²⁰ In the Kyrgyz Republic, accusations involving sexual conduct between men, such as the offence with which Mr. Ernazarov was charged, place the accused person's life and safety at risk due to a wide-spread perception of particular blameworthiness of the person accused of such a crime, and a culture of vigilance among other prisoners.²¹
18. On the same day that he was charged, a local prosecutor ordered that Mr. Ernazarov be transferred to the pre-trial detention center operated by the Ministry of Justice located across the street from the Police Station.²² Kyrgyz law generally requires such a transfer within 3 days of arrest.²³ Despite the prosecutor's transfer order, and for reasons that were never investigated or explained by the authorities, Mr. Ernazarov continued to be held at the Police Station with six cellmates in the same 3-by-3 meter cell for a further 13 days.²⁴

Physical and Psychological Abuse While in Detention

19. A guard at the Police Station told Mr. Akhmedov on a confidential basis that Mr. Ernazarov's cellmates incessantly insulted him for the crime with which he was charged, forced him to sleep and eat his food near the toilet bucket in the corner of the cramped cell, punched holes in his tableware (dishes and spoons), making it difficult for him to eat, and forced him to inflict injuries upon himself with metal cutlery.²⁵
20. Throughout his detention, Mr. Ernazarov was not allowed any but the most summary visits from his family, although he saw his lawyer on one occasion.²⁶ Mr. Ernazarov's brother and sisters made repeated attempts to visit him. The Police Station did not have facilities for visits by relatives. As a result, the sisters were usually turned away and told that Mr. Ernazarov could not have visitors because they were not permitted in his cell.²⁷ They were also told that they were not permitted to communicate with him and that they could not send him any mail or give him any food.²⁸

¹⁸ Exhibit 44: Diagrams of Police Station.

¹⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 14; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 5-6, 10; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 5-6, 11.

²⁰ Exhibit 28: Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov.

²¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 15.

²² Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 12; See Exhibit 44: Diagrams of Police Station; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 11.

²³ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 12.

²⁴ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 14; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 11; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 11.

²⁵ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 17.

²⁶ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 33.

²⁷ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 5-6 and 10; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 5-6 and 10; Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 9-10.

²⁸ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at paras. 5-6; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at paras. 5-6.

21. During one of the visits of Mr. Ernazarov's sisters to the Police Station, the investigation officer in charge of the case expressed his doubts as to Mr. Ernazarov's prospects of surviving his detention unharmed, apparently due to the charges that he faced. He stated that "Your brother [Mr. Ernazarov] would be better off dead. He is finished. You should stop running after him".²⁹
22. On two occasions, Mr. Ernazarov's sisters were able to see him for a few minutes, while he was being moved from his cell for questioning. On one of these occasions Mr. Ernazarov appeared to be afraid, and told his sisters that "It seems I will not get out of here alive, they say this is the end of me."³⁰

Death of Mr. Ernazarov in Detention

23. Mr. Ernazarov continued to be held at the Police Station until 20 November 2005 — more than two weeks after he was initially imprisoned. Shortly before 6:30 a.m. on that day, a guard making a routine check discovered Mr. Ernazarov lying unconscious, severely injured, and bleeding profusely in the corner of the cell that he shared with the other prisoners.³¹ He had cut wounds on his neck, the inner side of his left wrist and the inner side of his left ankle; abrasions to his left forearm, the inner side of his right ankle, and his abdomen; and several front teeth were missing.³²
24. Shortly after being discovered unconscious and bleeding, Mr. Ernazarov was taken by ambulance to the Osh Central Hospital and admitted to the emergency room.³³ He never regained consciousness. Shortly after his arrival at the hospital, he died from extensive blood loss caused by his injuries.³⁴

Autopsy of 20 November 2005

25. On 20 November 2005, Investigator Makhmudov ordered an autopsy of Mr. Ernazarov's body.³⁵ Dr. Narbayev conducted the autopsy that day.

Official Autopsy Report

26. An introductory statement to the autopsy report, entitled Circumstances of the Case, stated that "[i]t is known from the order that '... the prisoner Rakhmonberdi Ehnazarov, 1961, cut his throat for the purpose of committing suicide.'"³⁶

²⁹ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 8; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 8; Exhibit 7: Handwritten letter of Lolakhon Ernazarova (Mr. Ernazarov's sister) to investigators; see also Exhibit 9: Handwritten letter of Shakhribanu Anarbaeva (Mr. Ernazarov's sister) to investigators.

³⁰ Exhibit 7: Handwritten letter of Lolakhon Ernazarova (Mr. Ernazarov's sister) to investigators; see also Exhibit 9: Handwritten letter of Shakhribanu Anarbaeva (Mr. Ernazarov's sister) to investigators; Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 9; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 7.

³¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 18.

³² Exhibit 45: Results of Autopsy of Mr. Ernazarov dated November 20, 2005; Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 20.

³³ Exhibit 28: Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov; Exhibit 45: Results of Autopsy of Mr. Ernazarov dated November 20, 2005.

³⁴ Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005.

³⁵ Exhibit 28: Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov; Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005, at p. 1.

27. The autopsy report stated that the cause of Mr. Ernazarov's death was severe blood loss resulting from two cut injuries on the neck, likely inflicted not long before he died. The precise wording of the report was
- “[t]he death of R. Ernazarov ensued as a result of acute ischemia of the internal organs due to incised wounds of the neck on both sides with damage to the skin, the subcutaneum, the soft tissues, the subcutaneous veins, and partially the sternocleidomastoid muscles.”³⁷
- The report did not provide any timing of the non-lethal injuries, nor did it provide precise timing of the lethal injuries on the neck, indicating only that the “injuries could have been caused, shortly before the advent of the death, by the action of a stabbing/cutting object, possibly a knife”.³⁸
28. The report made the following detailed description of the injuries on Mr. Ernazarov.³⁹
- i) Unspecified missing front teeth: “visible teeth in the upper jaw are absent, the lower are intact”.
 - ii) Two cut wounds on the right side of the neck: “[i]n the region of the neck on the right [sic], a wound from the middle third to the chin ... measuring 9 x 4 cm, smooth margins, sharp ends, 2 cm in depth, with damage to the soft tissues, venous vessels and muscles, along the lower margin a double line and in the region of the neck double ends; There is also a wound of the neck on the right [sic] measuring 7 x 2 cm from the middle third of the neck to the chin, 2 cm in depth, smooth margins, sharp ends, with damage to the soft tissues, muscles and subcutaneous veins; there is blood and blood clots in the wound.”
 - iii) A wound on an unspecified hand: “[o]n the dorsal surface of the hand in the projection of metacarpal I, a wound measuring 2 x 0.2 cm in the transverse direction.”
 - iv) A wound on the left lower leg: “[a] wound in the lower third of the left lower leg, on the inner surface, measuring 3 x 0.2 cm, smooth margins, sharp ends, subcutaneous fat.”
 - v) Four abrasions on the abdomen: “linear abrasions on the anterior wall of the abdomen, at the level of the umbilicus, measuring 18 x 0.2 cm, 14 x 0.1 cm, from the right half of the abdomen to the wing of the left ilium, with a dark red crust; also above the pubis, parallel abrasions measuring 8 x 0.1 cm, 7 x 0.1 cm, with a dark red crust.”
 - vi) An abrasion on the left forearm: “[abrasion] ... in the region of the upper third of the left forearm, on the inner surface, measuring 3 x 0.2 cm, with a crust”.
 - vii) An abrasion on the left lower leg: “[abrasion] ... on the lower third of the right lower leg, on the inner surface, measuring 3 x 0.2 cm, with a crust”.
29. The report contained contradictory descriptions of the two lethal injuries on the neck of Mr. Ernazarov, which purportedly caused the severe blood loss and his death. The detailed description of the injuries in the report (see preceding paragraph) placed both cut wounds on the right side of the neck, while a section of the report entitled “Forensic Diagnosis”, described these injuries as “incisional wounds in the region of the neck on both sides.”⁴⁰

³⁶ Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005, at p. 1.

³⁷ Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005, at p. 4, para. 3.

³⁸ *Ibid.*

³⁹ Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005, at p. 2.

⁴⁰ Exhibit 45: Results of Autopsy of Mr. Ernazarov dated 20 November 2005, at p. 2 & 4.

The two injuries were also described as being on both sides of the neck by the conclusions of the report (see quote in para. 25 above).

30. On the afternoon of 20 November 2005, Mr. Ernazarov's body was returned to his family for burial.⁴¹ During the traditional ablution and burial, Abdunazar Kuranbekov, a co-villager assisting in the preparation of Mr. Ernazarov's body for burial, observed numerous cut wounds, consistent with those noted in the autopsy report.⁴² There is no evidence suggesting that any of the cuts, abrasions or other wounds identified in the autopsy were present prior to Mr. Ernazarov's detention. In particular, Mr. Ernazarov's sisters confirm that his front teeth were intact prior to his detention on 4 November 2005.⁴³

Independent Evaluation by Physicians for Human Rights

31. In July 2010, the Justice Initiative procured an independent evaluation from Physicians for Human Rights of the 20 November 2005 Autopsy Report ("the Physicians for Human Rights Report").⁴⁴ The report indicates that the official autopsy was inadequate because it failed to accurately describe the wounds that led to Mr. Ernazarov's death and to establish the manner of death.
32. The Physicians for Human Rights Report criticizes the imprecise descriptions of Mr. Ernazarov's critical injuries in the 20 November 2005 autopsy report. While indicating that the cause of death was due to "ex-sanguination caused by the two incised wounds to the neck," the official autopsy was internally inconsistent in its description of the neck injury that caused Mr. Ernazarov's death. The Physicians for Human Rights Report notes that "[o]ne part of the report [the 20 November 2005 autopsy report] describes incisions to both sides of the neck, while another refers to only one side." In addition, the official autopsy report does not record which blood vessels were severed, and in particular whether the jugular veins or carotid arteries had been cut. As the Physicians for Human Rights Report explains, "[t]his would determine the rate at which bleeding – and death – would occur ... If the carotid arteries were not cut, this death would have taken an extended period of time, easily exceeding 30 minutes to one hour longer."⁴⁵ Thus, the physiological description of Mr. Ernazarov's lethal injuries was negligently recorded in the official autopsy.
33. Most significantly, the Physicians for Human Rights report also states that it is not possible to conclude that Mr. Ernazarov's death resulted from suicide based on the information in the autopsy report. To the contrary, some of Mr. Ernazarov's injuries would be unusual for a suicide, such as the wounds to the left lower leg and the right hand, with the latter usually considered as a defensive wound.⁴⁶ The report further notes that "[s]uicides due to incised wounds to the neck are rare" and observed that it is particularly troubling that "no instrument that could have caused these injuries was reported to have been recovered at the scene of the death."⁴⁷ Compounding these physical markers that tend to indicate the death was not a suicide, the report notes that there is no information regarding the blood in his cell, whether there was evidence of a struggle, or with regard to who had access to his cell

⁴¹ Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 12.

⁴² Exhibit 5: Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother), at para. 12.

⁴³ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at p. 14. Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 14.

⁴⁴ Exhibit 47: Physicians for Human Rights, Report on the Death of Rakhmanberdi Ernazarov (6 July 2010)

⁴⁵ Exhibit 47: Physicians for Human Rights, Report on the Death of Rakhmanberdi Ernazarov (6 July 2010), at p. 2.

⁴⁶ *Ibid.* p. 2.

⁴⁷ *Ibid.* p. 3.

before and after his death.⁴⁸ Without this information, the Physicians for Human Rights Report concludes that “it is not possible to come to any conclusion as to whether this death was a homicide or a suicide.”

Official Investigations into Mr. Ernazarov’s death

34. Despite repeated requests by Mr. Ernazarov’s family, the police did not properly investigate his abuse or the full circumstances of his death and failed to involve the family in the limited investigation which was pursued, or inform them of its progress.
35. On 21 November 2005, Investigator Makhmudov, from the Ministry of Internal Affairs Division for the City of Osh, ordered a criminal investigation into Mr. Ernazarov's death, based on evidence that Mr. Ernazarov’s death was the result of an intentional infliction of serious bodily injuries — a crime under the Criminal Code of the Kyrgyz Republic.⁴⁹ Prosecutor Saidamatov, a public prosecutor for the City of Osh, was assigned to the investigation.⁵⁰
36. On or around 21 November 2005, the Department of Internal Security of the Ministry of Internal Affairs also ordered an internal check into Mr. Ernazarov’s death while in police custody. This internal check was to be performed alongside the criminal investigation by the Prosecutor’s Office.⁵¹
37. Both of these inquiries were perfunctory and fatally flawed, giving no evidence of a genuine effort to uncover the facts or identify the responsible parties.

Examinations of Mr. Ernazarov’s Cell

38. When the critically injured Mr. Ernazarov was found on the morning of 20 November 2005, no weapon or other instrument that could be used to inflict the wounds was found in the cell.⁵² Mr. Ernazarov’s cell mates claimed that, because they were asleep, they did not see or hear anything related to his injuries.⁵³ Later government reports confirmed that no cutting instrument was found, although Mr. Ernazarov’s six cellmates claimed that he talked about committing suicide.⁵⁴
39. On 28 November 2005, seven days after the criminal investigation was launched and eight days after Mr. Ernazarov’s body was found, Prosecutor Saidamatov conducted a second inspection of the cell. The official report of the inspection records only one item of additional evidence: a short message written in Uzbek on the inside of a cigarette pack.⁵⁵ Prosecutor Saidamatov’s report stated that, although the message was not very legible, it read as follows:

“My killers are Rakhmon Askarov and his daughter Shoir. They passed the shaving razor to me. Nobody is to be blamed. Nobody should suffer because of me. This was

⁴⁸ *Ibid.*

⁴⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 26.

⁵⁰ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 27.

⁵¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 35.

⁵² Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 37.

⁵³ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 37.

⁵⁴ Exhibit 28: Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov; Exhibit 29: Letter from Deputy Prosecutor of Osh City to Mr. Ernazarov’s Brother dated 13 November 2006.

⁵⁵ Exhibit 11: Report of Examination of Cell by Prosecutor Saidamatov.

not done on a court's verdict. There is a high court in Roma. I want my conscience cleaned. Good bye, Rakhmon.⁵⁶

40. The results of the second search of Mr. Ernazarov's cell again did not indicate discovery of a shaving razor, or any other weapon or cutting instrument, nor of any pens or other writing utensils. To the knowledge of Mr. Akhmedov, the prosecutor and police never investigated the allegation contained in the handwritten message on the cigarette package that Mr. Askarov or Shoirra Askarova provided a razor blade to Mr. Ernazarov, and neither Mr. Askarov nor Shoirra Askarova have admitted to providing such a razor blade.⁵⁷

First Requests to the Prosecutor and to the Ministry of Internal Affairs

41. Since 28 November 2005, Mr. Saidkamal Akhmedov has represented Mr. Ernazarov's family to assist them in uncovering the circumstances surrounding Mr. Ernazarov's death.⁵⁸
42. On 29 November 2005, Mr. Akhmedov petitioned Prosecutor Saidamatov for a copy of Investigator Makhmudov's decision to open a criminal investigation into the death.⁵⁹
43. On 30 November 2005, Mr. Akhmedov petitioned the head of the Osh Division of the Ministry of Internal Affairs for a copy of the results of the internal check.⁶⁰ He also requested a list of the inmates at the Police Station who had shared a cell with Mr. Ernazarov from 4 November 2005 through 20 November 2005.⁶¹
44. On 5 December 2005, Mr. Akhmedov received a reply from Prosecutor Saidamatov. The reply contained a copy of Investigator Makhmudov's decision to open an investigation and an explanation that the internal check was still on-going.⁶² The reply, however, made no mention of the list of inmates, despite Mr. Akhmedov's request.

Second Submission to the Prosecutor

45. On 12 December 2005, Mr. Akhmedov again petitioned Prosecutor Saidamatov for a copy of the results of the internal check, inquired about the status of the criminal investigation, and requested a copy of the Ministry of Internal Affairs' rules for temporary detention isolators.⁶³

Results of Internal Check by the Ministry of Internal Affairs

46. On 12 December 2005, the Department of Internal Security of the Ministry of Internal Affairs completed its internal check into Mr. Ernazarov's death. According to information provide to Mr. Akhmedov, the outcomes of this internal check were:
 - i) Berdee Orozbayev, a prison guard who was on duty the day of Mr. Ernazarov's death, violated Decree No. 47-04 of the Ministry of Internal Affairs by improperly carrying out his duties, thus allegedly allowing Mr. Ernazarov to inflict cut wounds

⁵⁶ Exhibit 11: Report of Examination of Cell by Prosecutor Saidamatov; See Exhibit 12: Copy of Message on Cigarette Pack.

⁵⁷ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 30-32.

⁵⁸ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 6.

⁵⁹ Exhibit 13: First Complaint asking for an initiation of an investigation on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, 29 November 2005.

⁶⁰ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 38.

⁶¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 38.

⁶² Exhibit 14: Reply dated 5 December 2005 signed by Prosecutor Saidamatov.

⁶³ Exhibit 15: Second Complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, 12 December 2005.

on himself, which resulted in his death. Berdee Orozbayev was disciplined with an oral warning.

- ii) Chief Akzholov, the Police Station Chief, was found to have unsatisfactorily organized the work of the Police Station staff. However, given that Chief Akzholov was already under a Strict Warning for an undisclosed different disciplinary offense, he was not sanctioned again.
- iii) Zh. Bokoev, the head of the Security Department of the Police Station, was ordered to strengthen his control over the Police Station's staff.⁶⁴

Second Request to the Ministry of Internal Affairs

- 47. On 13 December 2005, Mr. Ernazarov's brother petitioned the head of the Osh Division of the Ministry of Internal Affairs, expressing his belief that his brother was ill-treated and requesting information on the investigation's findings. The request asked for information about the search and seizure operation of Mr. Ernazarov's cell, including whether any weapons or other instruments used to cause Mr. Ernazarov's injuries were found. The request also queried whether a prosecutor had visited Mr. Ernazarov during his detention, and whether Mr. Ernazarov complained of abuse. Finally, the letter protested that Mr. Ernazarov's damaged dish and spoon were removed from the cell during inspection rather than being preserved as evidence.⁶⁵ This petition was copied to the Prosecutor General of the Kyrgyz Republic, the Administration of the President of the Kyrgyz Republic, the Osh Public Prosecutor, and the Ministry of Internal Affairs of the Kyrgyz Republic.
- 48. On 20 December 2005, the Osh Public Prosecutor's Office responded to the petition, informing Mr. Ernazarov's brother that the investigation of Mr. Ernazarov's death was on-going and that all of the allegations would be looked into during the investigation.⁶⁶

Third Submission to the Prosecutor

- 49. On 7 January 2006, Mr. Akhmedov submitted another inquiry to the Osh Public Prosecutor about the status of the criminal investigation. This submission drew the Prosecutor's attention to the evidence that Mr. Ernazarov had been subjected to torture or abuse while in custody, expressed concern about the failure to seize certain evidence, and again requested a list of the names of Mr. Ernazarov's cell mates and the official findings of the investigation.⁶⁷ Mr. Akhmedov did not receive any substantive response to this submission. Rather, on 19 January 2006 he was notified that the investigation was still being conducted and that a forensic medical examination had been ordered.⁶⁸

Forensic Review of Autopsy Results

- 50. Under Kyrgyz law, pre-trial investigations shall be concluded within two months. However, on 16 January 2006, Prosecutor Saidamatov extended this period by a month and ordered a review of the 20 November 2005 autopsy results.⁶⁹ During that review, Prosecutor Saidamatov asked the forensic doctors whether the cut wounds found on Mr. Ernazarov's body could have been self-inflicted. The forensic expert replied that the

⁶⁴ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 41.

⁶⁵ Exhibit 16: Second request by Mr. Akhmedov for information from the Ministry of Internal Affairs, 13 December 2005; Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 42.

⁶⁶ Exhibit 17: Response to the Lawyer dated 20 December 2005.

⁶⁷ Exhibit 18: Third inquiry of Mr. Akhmedov to the Osh Public Prosecutor dated 7 January 2006.

⁶⁸ Exhibit 19: Response to Mr. Akhmedov's application of 7 January 2006, dated 19 January 2006.

⁶⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 44.

wounds could have been self-inflicted but did not provide any explanation of how that might have occurred.⁷⁰ This review was conducted without viewing the body, or any photos of the wounds, as none were taken during the original autopsy, and did not involve the physician who performed the original autopsy.⁷¹ No questions appear to have been posed about whether the wounds could have been inflicted by a third party.⁷²

51. The criminal procedure laws of the Kyrgyz Republic require that the family of a victim, or their legal representative, be informed of forensic steps such as the review of an autopsy prior to those steps being conducted, and that they have the right to participate in forensic examinations.⁷³ In violation of this requirement, Mr. Akhmedov was not informed of the autopsy review until after its completion, on 19 January 2006.⁷⁴

Fourth, Fifth and Sixth Submissions to the Prosecutor and Petition by Member of Parliament

52. On 28 January 2006, Mr. Ernazarov's brother made a submission to the Prosecutor General of the Kyrgyz Republic and Member of Parliament Mr. Beknazarov. He alleged that Mr. Ernazarov had been tortured and killed by his cellmates with the acquiescence of the Police Station guards and Police Station administration, but the investigation was trying to shield those guilty from criminal liability. He complained of the bias of the investigation and requested that appropriate measures be taken, to assure that those guilty be brought to justice.⁷⁵ This submission was transferred to the Osh City Prosecutor's Office.⁷⁶
53. On 11 February 2006, Mr. Ernazarov's brother petitioned the Osh City Prosecutor, the Prosecutor General of the Kyrgyz Republic, the Government of the Kyrgyz Republic, the head of the Osh Division of the Ministry of Internal Affairs, and the Administration of the President of the Kyrgyz Republic, requesting that Mr. Ernazarov's death be investigated and those guilty brought to justice.⁷⁷
54. On 21 February 2006, Member of Parliament Mr. Beknazarov sent a letter to the Prosecutor General of the Kyrgyz Republic asking for assurance that there will be an objective investigation into Mr. Ernazarov's death. Mr. Beknazarov received a response on 23 August 2006 saying that the proceedings in the case had been suspended.⁷⁸
55. More than one month after submitting his 11 February 2006 petition, Mr. Ernazarov's brother had not received a response. As a result, on 21 March 2006 he submitted another petition repeating many of his earlier concerns and inquiries regarding the investigation.⁷⁹

Suspension of the Investigation

⁷⁰ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 44.

⁷¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 44.

⁷² Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 44.

⁷³ Articles 199(4) and 202 of the Criminal Procedure Code of the Kyrgyz Republic (edition of 22 July 2005).

⁷⁴ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at paras. 44-45.

Exhibit 19: Response to Mr. Akhmedov's application of 7 January 2006, dated 19 January 2006.

⁷⁵ Exhibit 20: Fourth complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh and to Member of Parliament Beknazarov, 28 January 2006.

⁷⁶ Exhibit 21: Letter Regarding the Transfer of Mamatkarim Ernazarov's (Mr. Ernazarov's brother) statement dated 9 February 2006.

⁷⁷ Exhibit 24: Fifth complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, copying numerous other parties, 11 February 2006.

⁷⁸ Exhibit 28: Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov.

⁷⁹ Exhibit 25: Petition of M. Ernazarov dated 21 March 2006.

56. On 23 March 2006, the Prosecutor General of the Kyrgyz Republic sent a reply to Mr. Akhmedov, informing him that the investigation into Mr. Ernazarov's death had been suspended as there was "no individual identified, who is subject to being charged with a crime".⁸⁰ It appears that on 6 February 2006, the investigating officer had ruled that there was no evidence of a crime committed by Berdee Orozbayev, the guard on duty on the date of Mr. Enazarov's death or any other police employee. As a result, the investigation had been suspended on 21 February 2006, apparently for lack of evidence that any person had committed a crime.⁸¹ Mr. Ernazarov's family and their lawyer were not informed of either of these determinations or rulings at the time.

Seventh Submission to the Prosecutor

57. On 2 June 2006, Mr. Akhmedov filed a statement with the Prosecutor General's office, the Government Administration, the President's Administration and the Osh Public Prosecutor, complaining about the biased investigation of Mr. Ernazarov's death, which he considered to be shielding guilty parties. Mr. Akhmedov also complained about the decision to suspend the investigation and the numerous breaches of procedure by the prosecution that were never remedied. Mr. Akhmedov requested the opening of a criminal investigation into allegations that Mr. Ernazarov was tortured while in detention, under Article 305 (1) of the Criminal Code of the Kyrgyz Republic. He explicitly requested to be informed of the decision on his request.⁸²

Criminal Investigation Re-opened

58. The criminal investigation was apparently reopened on 30 June 2006. In reopening the investigation, the Prosecutor-General's office initiated proceedings against officials from the Directorate of Internal Affairs for "the superficial investigation of the criminal case", and cited Deputy Prosecutor Shaynazarov "for improperly supervising" the internal investigation.⁸³

Analysis of handwriting by Ministry of Internal Affairs

59. The first formal analysis of the handwriting on the alleged suicide note did not take place until after the investigation was re-opened. On 15 August 2006, an expert employed by the Ministry of Internal Affairs analyzed the handwriting on the cigarette pack allegedly found on 28 November 2005, in order to determine whether it was that of Mr. Ernazarov.⁸⁴ The expert compared the writing on the cigarette pack with samples of Mr. Ernazarov's handwriting from forms and a record of questioning which he filled out or signed during the criminal investigation against him.⁸⁵ It appears that Mr. Ernazarov's family was not informed of the assignment and was not requested to provide comparative writing samples.

⁸⁰ Exhibit 26: Reply from Prosecutor General of the Kyrgyz Republic dated 23 March 2006.

⁸¹ Exhibit 23: Letter from Dzh. Kazakow at Prosecutor General's Office to Mamatkarim Ernazarov (Mr. Ernazarov's brother) dated 10 July 2006.

⁸² Exhibit 27: Seventh complaint submitted this time to the Prosecutor General's Office, copying numerous other parties, on behalf of the family by lawyer Mr. Akhmedov objecting to the decision to suspend the investigation taken by the City of Osh, 2 June 2006.

⁸³ Exhibit 23: Letter from Dzh. Kazakow at Prosecutor General's Office to Mamatkarim Ernazarov (Mr. Ernazarov's brother) dated 10 July 2006.

⁸⁴ Exhibit 46: Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack.

⁸⁵ Exhibit 46: Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack, at p. 1.

60. The expert issued a report concluding that the writing on the cigarette pack was that of Mr. Ernazarov.⁸⁶ The expert was also provided with three ballpoint pens by the investigator. The expert concluded that one of those pens was used by Mr. Ernazarov to write the message on the cigarette pack.⁸⁷ However, the origin of the pens is not specified in the expert's report, and there is no mention of any pens being found in either the first or second searches of Mr. Ernazarov's cell (see para. 38-39 above).
61. The official conclusion is at odds with the views of family members who know well and readily recognize Mr. Ernazarov's handwriting. In early 2006, a police officer visited Mr. Ernazarov's sisters, and showed them the handwritten message on the cigarette package allegedly written by Mr. Ernazarov. Mr. Ernazarov's sisters are intimately familiar with his handwriting from the many letters he wrote to them while he served in the Soviet military and worked in the coal mines in Russia. Upon seeing the message, Mr. Ernazarov's sisters informed the police officer that the handwriting on the package was not that of Mr. Ernazarov.⁸⁸

Memorandum of Assistant Prosecutor T. Akkozyev

62. On 13 November 2006, Assistant Prosecutor T. Akkozyev sent a letter to Mr. Ernazarov's brother which indicated that he suspected that Mr. Ernazarov was killed by a third person as opposed to a suicide, given that the investigation had only been suspended rather than being terminated.⁸⁹ That letter also provided some information on the results of the internal check, although Mr. Akhmedov never received the formal results or report of the investigation.

Judicial Challenges to the Investigation

63. Despite the explicit request for a response in writing to the 2 June 2006 submission (see paragraph 57 above), Mr. Ernazarov's family and Mr. Akhmedov did not receive any response. Mr. Akhmedov therefore filed a series of judicial applications seeking an order that the prosecutor respond to a number of concerns, ultimately without success.

First Application – Osh City Court

64. On 16 August 2006, Mr. Ernazarov's brother submitted a written complaint to the Osh City Court detailing the failure of the Prosecutor's Office to respond. The complaint asked the Court to rule that the Prosecution Office's failure to act on his 2 June 2006 request was unlawful, and to instruct the Prosecution Office to address that request.⁹⁰
65. The complaint set out the evidence that Mr. Ernazarov was subjected to psychological and physical torture during his detention, with the knowledge of police employees, which he argued was sufficient to warrant an investigation, including:

⁸⁶ Exhibit 46: Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack, at p. 2.

⁸⁷ Exhibit 46: Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack, at p. 2.

⁸⁸ Exhibit 6: Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister), at para. 13. Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), at para. 13.

⁸⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 57; Exhibit 29: Letter from Deputy Prosecutor of Osh City to Mr. Ernazarov's Brother dated 13 November 2006.

⁹⁰ Exhibit 30: 16 August 2006 Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) to the Osh Municipal Court.

- i) the results of the 20 November 2005 autopsy that concluded that Mr. Ernazarov had multiple bodily injuries;
 - ii) an affidavit by co-villager Abdunazar Kuranbekov confirming that before the burial, and during the ablution of Mr. Ernazarov's body, he saw multiple bodily injuries on Mr. Ernazarov's body;
 - iii) an affidavit by Mr. Ernazarov's relatives confirming that they saw "pierced wounds" and multiple cuts on Mr. Ernazarov's neck and various other parts of the body;
 - iv) the failure to find a weapon that caused Mr. Ernazarov's injuries and eventual death;
 - v) letters from Mr. Ernazarov's sisters, in which they assert that their brother had informed them in the presence of the Investigator Raimberdiyev that he was threatened by cellmates and he does not expect to leave the detention facility alive;
 - vi) an affidavit by Mr. Ernazarov's co-villagers, confirming that he had not been known to suffer from any psychiatric disorders.⁹¹
66. The complaint also outlined the "perfunctory and negligent" investigation of Mr. Ernazarov's death, the failure of the prosecution to follow the rules of procedure, the lack of response to the submissions by Mr. Ernazarov's brother and his lawyer, and detailed the following deficiencies in the investigation:
- i) no information was provided as to which cell Mr Ernazarov was kept in or the identity of the inmates detained in Mr. Ernazarov's cell and their procedural status;
 - ii) the family was never provided with a copy of the findings of the internal police inquiry;
 - iii) no investigation was undertaken into allegations that Mr. Ernazarov's dish and spoon were deliberately damaged to prevent him from eating his food;
 - iv) Mr. Ernazarov's family was not informed in advance of the request for an additional forensic opinion or given an opportunity to ask questions;
 - v) investigator Raimberdiev was informed of the ill-treatment of Mr. Ernazarov in the presence of his two sisters, but was never questioned (the Author submitted affidavits by his sisters);
 - vi) Mr. Ernazarov's sisters were never questioned regarding the information they received during their meeting with their brother and investigator Raimberdiev, regarding the ill-treatment which Mr. Ernazarov suffered;
 - vii) there was no investigation of the failure to transfer Mr. Ernazarov to the detention facility of the Ministry of Justice;
 - viii) there was no investigation of whether Mr. Ernazarov received any medical treatment during his detention;
 - ix) there was no examination of which prosecutors inspected the Police Station during Mr. Ernazarov's detention, and what violations they recorded.

Second Application – Osh City Court

67. On 18 August 2006, Mr. Ernazarov's brother learned that the Osh City Court had not acted on the complaint. As a result, on 19 August 2006 a new application was filed with the Osh

⁹¹ Exhibit 30: 16 August 2006 Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) to the Osh Municipal Court.

City Court requesting it to follow the Criminal Procedure Code of the Kyrgyz Republic and make a decision regarding the previously filed complaint.⁹²

68. On 23 August 2006, Mr. Ernazarov's brother received a written notice from the Osh City Court informing him that the Court had forwarded his complaint to the Prosecutor's Office without ruling on it.⁹³

First Appeal – Regional Court

69. On 12 September 2006, Mr. Ernazarov's brother appealed the decision of the Osh City Court of 23 August 2006 to forward his complaint to the Prosecution Office without ruling on it.⁹⁴ He argued that the decision was unlawful and that the City Court should have ruled on the merits of his complaint.
70. The Regional Court rejected the appeal, citing the absence of a decision in writing by the Osh City Court. The decision was communicated to Mr. Ernazarov's brother through a letter from the Osh Municipal Court of 25 September 2006.⁹⁵

Third Application – Osh City Court

71. On 20 October 2006, Mr. Ernazarov's brother again petitioned the Osh City Court through his lawyer to issue a decision regarding his complaint against the Prosecutor's Office.⁹⁶
72. On 31 October 2006, the Court again returned his complaint without ruling on the substance. Judge N. Bakirova informed Mr. Ernazarov's brother that courts cannot consider the type of claims contained in his complaint,⁹⁷ despite the fact that such a ruling contradicted the laws of the Kyrgyz Republic.⁹⁸

Fourth Application – Osh City Court & Second Appeal – Regional Court

73. On 21 November 2006, Mr. Ernazarov's brother petitioned the Osh City Court a fourth time requesting it to rule on the 2 June 2006 submission.⁹⁹
74. On 28 December 2006, the Osh City Court rejected the complaint against the Prosecutor's Office, asserting that in accordance with Article 132 of the Criminal Procedure Code of the Kyrgyz Republic a failure of the prosecution to take action was not subject to judicial review.¹⁰⁰

⁹² Exhibit 31: 19 August 2006 New Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) to the Osh Municipal Court made because the Court failed to respond to the 16 August 2006 complaint.

⁹³ Exhibit 32: 23 August 2006 Written Notification that a copy of the Written Complaint of 16 August of Mamatkarim Ernazarov (Mr. Ernazarov's brother) was forwarded to the Osh Public prosecutor.

⁹⁴ Exhibit 33: 12 September 2006 Request to the Cassation Board of the Osh District Court to examine the Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) that, to that point, had not been examined by the municipal court.

⁹⁵ Exhibit 34: Response from Osh Municipal Court dated 25 September 2006.

⁹⁶ Exhibit 35: Petition dated 20 October 2006.

⁹⁷ Exhibit 36: Reply from the Osh Municipal Court, Judge N. Bakirova, dated 31 October 2006.

⁹⁸ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 56.

⁹⁹ Exhibit 37: 21 November 2006 Petition to the Osh Municipal Court by Mamatkarim Ernazarov (Mr. Ernazarov's brother) asking for consideration of his complaints that were submitted to the same Court on 16 August 2006 and 19 August 2006 and to the Cassation board of the Court on 12 September 2006.

¹⁰⁰ Exhibit 38: Decision Dated 28 December 2006 of the Osh City Court.

75. On 10 February 2007, Mr. Akhmedov appealed that decision to the Osh Regional Court.¹⁰¹ On 15 March 2007, the Regional Court rejected the appeal and affirmed the Osh City Court's 28 December 2006 decision.¹⁰²

Appeal to the Supreme Court

76. On 28 May 2007, Mr. Akhmedov appealed the Osh Regional Court's 15 March 2007 ruling to the Supreme Court of the Kyrgyz Republic.¹⁰³
77. On 26 September 2007, the Supreme Court of the Kyrgyz Republic overturned the decisions of the two lower courts, holding that those decisions did not review whether the Osh Prosecutor's Office has in fact refused to open a criminal investigation into the allegations brought by Mr. Ernazarov's brother.¹⁰⁴ The Supreme Court remanded the case to the Osh City Court for it to make a ruling on the merits of Mr. Akhmedov's complaint and on the basis of all the relevant facts in the case.¹⁰⁵

Osh City Court's refusal to comply with the Supreme Court's ruling

78. On 13 March 2008, the Osh City Court conducted a hearing. However, the City Court again rejected the claim without considering or ruling on the substance as it claimed that it could not locate Mr. Ernazarov's brother's written complaint in the case file.¹⁰⁶
79. The Court refused to hear the claim unless a new complaint was filed. After the results of the 13 March 2008 hearing and the numerous complaints and applications filed during almost two and a half years since Mr. Ernazarov's death, Mr. Ernazarov's family decided against starting another round of petitioning, believing it to be futile.¹⁰⁷

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

80. The violations set out above are consistent with a pattern of failure by the authorities in the Kyrgyz Republic to independently and effectively investigate cases of abuse and death in custody. Allegations of torture and deaths in police custody are investigated by the police, rather than by any independent body. While the Kyrgyz Republic's judicial system is theoretically an independent branch of the government, in practice judges are under the influence of the prosecutor's office, which plays a dominant role in the criminal justice system.¹⁰⁸ As a result, torture and deaths in custody commonly go unpunished.

¹⁰¹ Exhibit 39: Appeal to the Osh City Court's Cassation Board dated 10 February 2007 asking for a revocation of the decision of the Osh City Court of 28 December 2006 and for a decision acknowledging the inaction of prosecutors and to make a determination that they failed to act in checking the submission of 2 June 2006.

¹⁰² Exhibit 40: Regional Court Decision dated 15 March 2007 on Mamatkarim Ernazarov (Mr. Ernazarov's brother) appeal of the 28 December 2006 decision of the Osh City Court rejecting his claims based on Article 132 of the Criminal Procedure Code.

¹⁰³ Exhibit 41: Appeal to Supreme Court dated 28 May 2007.

¹⁰⁴ Exhibit 42: Supreme Court Decision dated 26 September 2007 revoking the decisions of the Osh City Court and the Osh Oblast Court Board of Cassation of 28 December 2006 and 15 March 2007 respectively.

¹⁰⁵ Exhibit 42: Supreme Court Decision dated 26 September 2007 revoking the decisions of the Osh City Court and the Osh Oblast Court Board of Cassation of 28 December 2006 and 15 March 2007 respectively.

¹⁰⁶ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 62.

¹⁰⁷ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 62.

¹⁰⁸ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer), at para. 63; See Exhibit 43: Diagram of Political Structure of the Kyrgyz Republic; The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kyrgyzstan, 18-22 September and 1 October 2005, U.N. Doc. E/CN.4/2006/52/Add.3, at page 2 and para. 76.

81. In September 2005, two months before Mr. Ernazarov's death, the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, visited Kyrgyzstan and expressed concern "about a general failure to ensure prompt, impartial and full investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment, as well as a general failure to prosecute, where appropriate, the alleged perpetrators. In particular, prosecutors often appear unwilling to initiate criminal prosecutions in this regard, and the Special Rapporteur was not able to obtain information on any criminal prosecutions that have been brought for torture or ill-treatment."¹⁰⁹ The Special Rapporteur concluded that "the various limitations on the independence of the judiciary ... mean that judges regularly conduct proceedings in favour of the prosecution,"¹¹⁰ and "note[d] with concern that the provisions of the prosecutor's office are set out in the chapter of the Constitution relating to the executive power."¹¹¹
82. The Special Rapporteur reported that despite some efforts to improve the situation
- "a number of issues continue to have a negative impact on the independence of the judges and lawyers. As a result, the judiciary still does not operate as a fully independent institution capable of fulfilling its fundamental role of administering fair and independent justice and safeguarding and protecting human rights."¹¹²
- The Special Rapporteur identified length of tenure and procedures for appointment and dismissal as preventing the judiciary from operating independently, and also commented on widespread judicial corruption. In addition, he confirmed that prosecutor's offices "play an extremely dominant role in the administration of justice" and that they "exercise supervisory powers and to exert disproportionate influence over the pretrial and trial stages of judicial proceedings."¹¹³
83. Despite several constitutional and other legislative amendments since the visit of the Special Rapporteur,¹¹⁴ the fundamental shortcomings of the Kyrgyz judicial system and impunity of perpetrators of torture remain. Many of his recommendations and concerns were echoed during the 2010 Universal Periodic Review of Kyrgyzstan ("UPR") by the United Nations Human Rights Council. Kyrgyzstan received recommendations to "[s]trengthen its safeguards against torture, including through the improvement of conditions in prisons and detention facilities and the establishment of a complaint mechanism for victims of torture";¹¹⁵ to "ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture of any person subjected to any form of

¹⁰⁹ The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kyrgyzstan, 18-22 September and 1 October 2005, U.N. Doc. E/CN.4/2006/52/Add.3, at para. 29

¹¹⁰ *Ibid.*, at para. 51

¹¹¹ *Ibid.*, at para. 49

¹¹² *Ibid.*, at page 2

¹¹³ The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kyrgyzstan, 18-22 September and 1 October 2005, U.N. Doc. E/CN.4/2006/52/Add.3, at page 2; see also para. 76.

¹¹⁴ Several Constitutional amendments were adopted in Kyrgyzstan since 2005 and the version adopted by referendum in June 2010 separates prosecutor's office from the executive to the "Other state authorities." This does not change the situation which Mr. Ernazarov's family faced when attempting to obtain justice for his death in 2006; and in any event, these amendments have had little practical impact.

¹¹⁵ Report of the Working Group on Universal Periodic Review. Kyrgyzstan. 16 June 2010, U.N. Doc. A/HRC/15/2, at para 76.53

arrest, detention or imprisonment”;¹¹⁶ and to “[e]stablish constitutional reforms that will guarantee the separation of powers, the rule of law, the independence of the judiciary.”¹¹⁷

84. A group of leading anti-torture NGOs in Kyrgyzstan¹¹⁸ “raised concerns about the lack of accountability for deaths in custody and recommended preventing and duly investigating all cases of death in custody in accordance with international standards” in their joint UPR submission.¹¹⁹ The submission referred to “reports received since March 2007 from victims and their relatives of more than 200 cases of torture and cruel treatment, 92 per cent of them allegedly committed by the police”.¹²⁰ It observed that even if charges are brought in a case of torture, they “are generally brought not for torture, but for other crimes of less gravity, such as negligence”¹²¹ although torture was only “a ‘minor crime’ under the law with punishment not corresponding to the gravity of the offence.”¹²² This impacted on the ability of victims to obtain compensation, because “Kyrgyz law does not allow victims of torture to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture [...and] since the criminalization of torture in 2003, no victim of torture had received monetary compensation.”¹²³

85. Amnesty International noted in its UPR submission that

“torture and other ill-treatment remained widespread and is practiced with impunity. According to AI, beatings by law enforcement officers appear to continue to be routine. According to AI, human rights defenders have also reported deaths in custody as a result of torture.”¹²⁴

Amnesty International went on to recommend the Kyrgyz Republic “ensure prompt, impartial and comprehensive investigations of all complaints of torture or cruel, inhuman or degrading treatment”,¹²⁵ and also stated “that corruption in law enforcement and the judiciary was believed to significantly contribute to a climate of impunity.”¹²⁶

VII. ADMISSIBILITY

86. This petition satisfies the requirements for admissibility under Article 5 of the first Optional Protocol. The family have made extensive efforts at the domestic level to obtain a proper investigation into the death of Mr. Ernazarov, and have therefore exhausted all available and effective domestic remedies.

A. Temporal Jurisdiction

¹¹⁶ *Ibid.*, at para. 76.54

¹¹⁷ *Ibid.*, at para. 76.4

¹¹⁸ The Golos Svobody (Bishkek), Spravedlivost (Jalal-Abad) and Advocacy Center on Human Rights (Osh)

¹¹⁹ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para 27. Available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KGSession8.aspx>,

¹²⁰ *Ibid.*, at para. 16.

¹²¹ *Ibid.*, at para. 28.

¹²² *Ibid.*, at para. 16.

¹²³ *Ibid.*, at para. 28.

¹²⁴ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/8/KGZ/3, para 17. Available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KGSession8.aspx>.

¹²⁵ *Ibid.*, at para. 17.

¹²⁶ *Ibid.*, at para. 26.

87. The Kyrgyz Republic acceded to the ICCPR and the first Optional Protocol to the ICCPR on 7 October 1994. The violations of Articles 6(1), 7 and 2(3) of the ICCPR which are the subject of this communication commenced in November 2005. This communication therefore falls within the temporal jurisdiction of the Committee.

B. No other international complaint

88. No complaint has been submitted to any other procedure of international investigation or settlement regarding the death of Mr. Ernazarov and the inadequacy of the subsequent investigation. This communication therefore satisfies the admissibility requirement in Article 5(2)(a) of the first Optional Protocol to the ICCPR.

C. Exhaustion of domestic remedies

89. As outlined above, Mr. Ernazarov's family have made extensive efforts to obtain an effective investigation into his mistreatment and death, satisfying the requirement for the exhaustion of domestic remedies in Article 5(2)(b) of the first Optional Protocol. The Author made repeated requests to the investigating and prosecuting authorities, numerous judicial challenges, and appeals up to the Supreme Court of the Kyrgyz Republic. Even after the Supreme Court sent the matter back for reconsideration, the Osh City Court still refused to consider the substance of the Author's complaint. If a further course was theoretically available by re-filing a new complaint, this would have been unduly prolonged and in the circumstances where judicial authorities have repeatedly declined to consider the merits of his prior complaints, would not have been effective. Any other domestic civil or disciplinary remedies in this case are unavailable or are ineffective given the nature of the violations.
90. An applicant is required to exhaust those domestic remedies which are available and effective.¹²⁷ The Committee has clarified that this refers "primarily to judicial remedies"¹²⁸ which must offer "a reasonable prospect of redress".¹²⁹ As the Committee has explained, "if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective."¹³⁰

1. The Author has exhausted domestic remedies

91. The Author has exhausted all effective domestic remedies in relation to the mistreatment and death of Mr. Ernazarov. He has sought information on the results of the investigation and requested that steps be taken to ensure the effectiveness of that investigation; challenged the suspension of the investigation before the investigating authority; and

¹²⁷ "exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available" – UNHRC, Annual Report 1984, para. 584 (quoted in Moller and de Zayas, *United Nations Human Rights Committee Case Law 1977-2008* (Kehl am Rhein : N.P. Engel Verlag, 2009), p. 112)

¹²⁸ *R.T. v France*, UNHRC, Views of 30 March 1989, UN Doc. CCPR/C/35/D/262/1987, para. 7.4; *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, para. 5.2; *Mariam Sankara et al. v. Burkina Faso*, UNHRC, Views of 28 March 2006, UN Doc. CCPR/C/60/D/1159/2003, para. 6.4

¹²⁹ *Patiño v. Panama*, UNHRC, Views of 21 October 1994, UN Doc. CCPR/C/52/D/437/1990, para. 5.2; *Potter v. NZ*, UNHRC, Views of 28 July 1997, UN Doc. CCPR/C/60/D/632/95, para. 6.3. See also *Torres Ramirez v Uruguay*, UNHRC, Views of 8 April 1980, UN Doc. CCPR/C/10/D/4/1977, para. 5 (requiring that the state demonstrate "a reasonable prospect that such remedies would be effective").

¹³⁰ *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, para. 5.2; *Coronel et al v. Colombia*, UNHRC, Views of 24 October 2002, UN Doc. CCPR/C/76/D/778/1997, para. 6.2.

challenged the failure of the investigating authorities to respond to or act on his complaints in the courts.

Challenges to inadequate nature of the investigation

92. The Author made multiple requests for a full investigation of the death of his brother and the allegations that his brother had been tortured. While a criminal investigation was opened into the death of Mr. Ernazarov, it suffered from numerous deficiencies and delays (described in detail at paras. 29-34, 38-40 and 47-79 above, and paras. 135-187 below).
93. Between 29 November 2005 and 2 June 2006, the Author made two requests to the Ministry of Internal Affairs and seven requests to the Prosecutor's office. He repeatedly sought information on the status and results of the investigations; identified deficiencies and highlighted facts and circumstances that required further investigation; asked why certain evidence was not gathered and steps were not taken; and protested against his exclusion from those forensic examinations which did take place (see paras. 42-63 above). These requests were addressed not only to the Osh City Prosecutor, but also to the Prosecutor General of the Kyrgyz Republic and to the head of the Osh Division of the Ministry of Internal Affairs, and were further copied to the Government of the Kyrgyz Republic, and the Administration of the President of the Kyrgyz Republic. None of these steps were successful in remedying the deficiencies and obtaining an effective investigation.

Judicial appeals

94. The Author has also exhausted the judicial remedies available. He made a detailed submission to the Osh City Court on 16 August 2006, outlining the deficiencies in the investigation and asking that the Court order the Prosecution to address his earlier requests, which the Court did not act on (see paras. 64-66 above). The Author subsequently filed three further complaints before the Osh City Court, none of which the Court addressed in substance (see paras. 67-68 and 71-74 above); and filed two appeals to the Regional Court, both of which were dismissed (see paras. 69-70 and 75 above).
95. Ultimately, the Author appealed to the Supreme Court of the Kyrgyz Republic, which on 26 September 2007 upheld his appeal and directed the Osh City Court to rule on the merits of his complaint (see para. 77 above). However, when the Osh City Court sat to hear the case on 13 March 2008, it rejected the claim on the basis that it could not locate the original written complaint (see paras. 78-79 above).
96. Given that the Author has made numerous submissions to the Prosecutor's offices regarding the deficiencies in the investigation, sought a judicial order that the Prosecutor consider and respond to his requests, and appealed the failure to grant this order all the way to the Supreme Court, the Author has exhausted all available domestic remedies.

2. Any new criminal complaint would be unduly prolonged and ineffective

97. The Author should not be required to file a new criminal complaint to the Osh City Court in order to exhaust domestic remedies as to do so would have resulted in domestic remedies being unreasonably prolonged, and there is no reason to believe that a new complaint would be any more effective than the previous one.
98. After four complaints to the City Court and two appeals to the Regional Court, the Supreme Court directed the Osh City Court to consider the Author's complaint. However almost six months later the City Court rejected the claim on the basis that it had lost the original written complaint. The City Court refused to hear the claim further, unless a new complaint was filed.

Any new complaint would have been unreasonably prolonged

99. The process of seeking an effective criminal investigation into Mr. Ernazarov's death had become so delayed that it did not have to be exhausted any further. An individual is not required to exhaust domestic remedies which are unreasonably prolonged.¹³¹ Whether the delays are unreasonable will depend on the complexity of the case.¹³² This Committee has previously considered that "a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was 'unreasonably prolonged' within the meaning of article 5, paragraph 2(b), of the Optional Protocol."¹³³ The Committee against Torture has looked at whether there are new facts which national authorities needed to consider, when deciding whether an applicant is required to file a new application.¹³⁴
100. By the time the City Court refused to rule on the Author's complaint upon remand from the Supreme Court, the Author faced a delay of almost two-and-a-half years since his first petition to the Prosecutor. This delay was not to have his claim *adjudicated*, but to be told that he must now re-file a new claim to *begin* the process of seeking an order that the Prosecutor must *consider* and rule on his original requests. The delays were due to the persistent refusal of the Prosecutor and the City and Regional Courts to consider the substance of his claims. There were no new facts in this case; rather, the Author was requesting that the original circumstances be fully investigated. To require the Author to file a new application – starting the process again from the beginning, after he had already filed four petitions before the City Court and three appeals – would be unreasonably prolonged.

Any new complaint would not have been an effective remedy

101. The constant delay and refusal by the Prosecutor and the Courts to address the merits of his previous complaints demonstrates that a new complaint would not have been an effective remedy. As noted above, an individual is only required to exhaust those domestic remedies which are effective, i.e. which offer a reasonable prospect of redress.
102. There is no reason to believe that a new investigation would have been any more effective than the previous one. For the reasons outlined above in paragraphs 136 to 171, the investigation into the death of Mr. Ernazarov was not independent or effective, as the police failed to take a number of basic steps. This failure was recognized by the Prosecutor-General's office (see para. 58 above). However, nothing changed with the formal re-opening of the investigation: only one forensic procedure was conducted, which Mr. Ernazarov's family was excluded from, and nothing has been done in the four years since the June 2006 re-opening. Based on such a flawed investigation, any new complaint would be fundamentally tainted and had no chance of success. The ineffective nature of further attempts to challenge the investigation is supported by the Special Rapporteur's observations that the prosecutors have substantial influence over the courts, and they are unwilling to investigate and prosecute abuses in custody (see paras. 81-82 above).

¹³¹ First Optional Protocol to the ICCPR, Article 5(2)(b): "This shall not be the rule where the application of those remedies is unreasonably prolonged."

¹³² *Fillastre and Bizoarn v. Bolivia*, UNHRC, Views of 5 November 1991, UN Doc. CCPR/C/43/D/336/1988, para. 5.2.

¹³³ *Fillastre and Bizoarn v. Bolivia*, UNHRC, Views of 5 November 1991, UN Doc. CCPR/C/43/D/336/1988, para. 5.2.

¹³⁴ *P.M.P.K v Sweden*, UNCAT, Decision of 20 November 1995, U.N. Doc. CAT/C/15/D/30/1995, paras. 4-5.

103. Given their previous failings, there is no reason to believe that the courts would have effectively supervised a new investigation. The Osh City Court repeatedly failed to act on or consider the substance of the Author's complaints (see paras. 67-68, 72 and 74 above). It refused even when directed to do so by the Supreme Court, claiming that it was unable to locate a particular document in the file maintained by the Court itself (see paras. 78-79 above).

3. Other remedies are ineffective or unavailable in this case

104. The Author is not required to pursue other remedies such as civil or disciplinary proceedings. In light of the gravity of the violation against Mr. Ernazarov, nothing less than a criminal investigation and prosecution would constitute an effective remedy, as administrative or disciplinary measures cannot be considered adequate or effective for serious violations such as the right to life.
105. The minor disciplinary sanctions which were imposed on police officers on 12 December 2005 (one oral warning; one finding of unsatisfactory organization of work with no sanction imposed; and one order to strengthen control over staff – see para. 46 above) cannot be considered an effective remedy, and so do not need to be exhausted.
106. By terminating the criminal case against the police officers without any charges being brought, the state has hindered the ability of Mr. Ernazarov's family to pursue any civil remedies. Civil claims against state officials for responsibility for the torture and death of Mr. Ernazarov can only be brought in the context of a criminal prosecution (see para. 84 above). Such remedies are therefore not available in this case. Even if a civil claim might be brought against officials for negligence, based on the administrative findings of the internal check, this (a) was not available in practice, as Mr. Ernazarov's family was never given an official copy of the results of the internal investigation which would be required to bring such a claim, and (b) could not be considered an adequate or effective remedy for the torture and death of a detainee.

VIII. VIOLATIONS OF THE ICCPR

107. The Kyrgyz Republic violated the ICCPR in the following ways:
- *A. Failure to protect a vulnerable prisoner.* The Kyrgyz Republic violated Article 6(1) of the ICCPR because it failed in its positive obligation to protect the right to life of a vulnerable prisoner, and failed to provide a plausible explanation for his death.
 - *B. Arbitrary Killing.* As the Kyrgyz Republic has failed to provide a plausible explanation for the custodial death of Mr. Ernazarov through an effective investigation, there is a presumption that he was arbitrarily killed, in violation of Article 6(1).
 - *C. Mr. Ernazarov was Tortured.* The Kyrgyz Republic violated Article 7 of the ICCPR because Mr. Ernazarov was subjected to physical and psychological abuse while in the custody of the Kyrgyz authorities, with the knowledge and complicity of its officials. This abuse amounted to torture in violation of Article 7.
 - *D. Failure to conduct an effective investigation.* The Kyrgyz Republic failed to conduct a prompt, impartial, thorough, and effective investigation in violation of its obligations under Articles 6(1) and 7 of the ICCPR in conjunction with Article 2(3) of ICCPR.
 - *E. Failure to provide redress.* The Kyrgyz Republic failed to provide access to effective remedies including compensation and adequate reparation, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3).

A. Failure to Protect a Vulnerable Prisoner: Article 6(1)

108. The Kyrgyz Republic is responsible for the death of Mr. Ernazarov because it failed to fulfill its positive obligation to protect a vulnerable prisoner from either murder or suicide. Because Mr. Ernazarov was a prisoner charged with a sexual offence the State knew that he was at risk, and should not have placed him in a cell with six other men.
109. This Committee has described the right to life under Article 6(1) as the “supreme right”¹³⁵ which “cannot be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.”¹³⁶ The positive obligation to take adequate measures to protect the right to life has been recognized in a number of the Committee’s decisions,¹³⁷ and includes protection “not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights”.¹³⁸ The Committee has also “reminded [States] of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3”.¹³⁹
110. The positive obligation to protect life applies in particular to detainees: “it is incumbent on States to ensure the right of life of detainees ... the State party by arresting and detaining individuals takes the responsibility to care for their life.”¹⁴⁰ The Committee has recognized that prisoners are “particularly vulnerable”,¹⁴¹ imposing a special responsibility on the State to take adequate and appropriate measures to protect them.¹⁴² Where a state fails to take “adequate measures” to protect prisoners, they may be responsible for a violation of Article 6(1).¹⁴³ The fact that a prisoner may not have specifically asked for help, or explicitly put the prison on notice that he was at risk of harm is irrelevant to the duty – it is incumbent on the prison to protect a detainee’s life even if they have not requested protection.¹⁴⁴ The Committee has found that the duty extends to the protection of a prisoner’s “well-being”.¹⁴⁵ The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment similarly recognizes that the protection of persons from cruel, inhuman or

¹³⁵ UNHRC, *General Comment 14, The right to life, Article 6*, 1984, at para. 1.

¹³⁶ UNHRC, *General Comment 6, Right to Life*, 1982, at para. 2.

¹³⁷ See e.g. *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para 9.2.

¹³⁸ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 8.

¹³⁹ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 8.

¹⁴⁰ *Lantsova v Russia*, UNHRC, Views of 15 April 2002, U.N. Doc. CCPR/C/74/D/763/1997, para. 9.2; see also *Titiahonjo v Cameroon*, UNHRC, Views of 13 November 2007, U.N. Doc. CCPR/C/91/D/1186/2003, para. 6.2.

¹⁴¹ UNHRC, *General Comment 21, Right to Humane Treatment and Respect for Human Dignity*, 1992, para. 3.

¹⁴² *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para. 9.2. *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. CCPR/C/15/D/30/1978, at para. 11.2 & 13.3.

¹⁴³ *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para 9.2.

¹⁴⁴ *Lantsov v. Russian Federation*, UNHRC, Views of 22 March 2002, U.N. Doc. CCPR/C/74/D/763/1997, at para 9.2.

¹⁴⁵ *Fabrikant v. Canada*, UNHRC, Views of 6 November 2003, U.N. Doc. CCPR/C/79/D/970/2001, at para 9.3.

degrading treatment or punishment “should be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental”.¹⁴⁶

111. While all prisoners are vulnerable, certain categories of prisoners are particularly vulnerable to abuse, including prisoners suspected of sexual violence. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment standards (“CPT Standards”) state that “[p]risoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners”,¹⁴⁷ and that attention must be paid to protecting prisoners from that risk.
112. The obligation to protect requires that the state take positive steps to protect the individual both from murder and from suicide while in custody. As the Human Rights Committee has held, regardless of:

“whether [the individual] committed suicide, was driven to suicide or was killed by others while in custody, the inescapable conclusion is that in all the circumstances, the [state] authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6(1) of the Covenant.”¹⁴⁸
113. The Kyrgyz Republic violated its positive obligation to protect the right to life of Mr. Ernazarov. From the moment of his detention on 4 November, 2005, Mr. Ernazarov was in the custody and control of the Kyrgyz authorities, who therefore assumed legal responsibility to protect his life and well-being. Further, the Kyrgyz authorities knew that Mr. Ernazarov was particularly vulnerable, given that he had been charged with forced sodomy. In Kyrgyzstan, prisoners who are charged with certain sexual offences or who are perceived to be homosexual are often relegated to a class of prisoners labeled as “petukhi”.¹⁴⁹ A 2006 report of the International Crisis Group indicates that “petukhi” are not allowed to prepare food and eat with other prisoners, live under a constant threat of violence at the hands of other inmates, are denied health care, and are often ostracized into the worst living quarters within the prisons.¹⁵⁰ This pattern of persecution is confirmed in a 2004 report by the NGO “Oasis”, which noted that prisoners who are perceived as belonging to a sexual minority, as well as those who do not comply with the norms in Kyrgyz prisons, are classified as “offended” or “humiliated” and are subjected to physical violence by other prisoners. The report notes that prison officials were unable to ensure the safety of these prisoners, failed to punish beatings and rapes against them, and supported their abuse by forcing them to perform the most menial tasks (such as cleaning toilets and waste pits) and to live and eat separately from others.¹⁵¹ The treatment of Mr. Ernazarov,

¹⁴⁶ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, U.N. Doc. A/RES/43/173, at para. 27.

¹⁴⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards: "Substantive" sections of the CPT's General Reports*, p. 21. Available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.

¹⁴⁸ *Dermit Barbato v Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para. 9.2.

¹⁴⁹ International Crisis Group, *Kyrgyzstan's Prison System Nightmare*, Asia Report N. 118, 16 August 2006, at p. 14. Available at: http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/118_kyrgyzstans_prison_system_nightmare.ashx

¹⁵⁰ *Ibid.*

¹⁵¹ “Oasis” is a local organisation promoting LGBT rights in Kyrgyzstan. See Exhibit 48: The Public Foundation for the Protection and Promotion of Youth “Oasis”, *Report of the Monitoring of Human Rights in the Penitentiary Facilities of the Chuy Region of the Kyrgyz Republic: Respect of the Right for Protection from Discrimination of Sexual Minorities and Stigmatized Groups among Prisoners*, Bishkek, 2004.

including the physical violence, mutilation of his dish and spoon, and his relegation to sleep and eat near the toilet (see para. 19 above), is consistent with this documented record of abuse.

114. Statements by Kyrgyz officials show that the authorities were aware that Mr. Ernazarov was suffering from abuse and was in danger in detention. The evidence suggests that he suffered from numerous cuts and abrasions while in detention (see para. 28 above), including the loss of his teeth, which were intact when arrested but absent on his death. Investigator Raimberdiyev informed his sisters that “[Mr. Ernazarov] would be better off dead. He is finished.” (see para. 21 above). A guard at the police station has also stated that they were aware that Mr. Ernazarov was being abused by his cell-mates (see para. 19 above).
115. Although the authorities were on notice that Mr. Ernazarov would be vulnerable to abuse due to the nature of the charges against him, and were specifically aware that he was being abused during his detention, they took no steps to protect him while he was in police custody. To the contrary, they kept him in the same cell in violation of an order from the prosecutor that Mr. Ernazarov be transferred to a pre-trial detention centre where the physical and psychological abuse may have ended (see para. 17 and 18 above). Regardless of the manner of his death, the Kyrgyz authorities therefore failed in their positive obligation to protect Mr. Ernazarov.

B. Arbitrary Killing: Article 6(1)

116. There is a presumption that Mr. Ernazarov was arbitrarily killed, as the State has failed to provide a plausible explanation for his death in custody through an independent investigation.
117. In *Eshonov v Uzbekistan*, the Committee recently ruled that “a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution”, unless that presumption can be rebutted by a “thorough, prompt and impartial investigation”.¹⁵² The Committee applied a similar principle to a situation where the state claimed that the death was suicide in the case of *Dermi Barbató v. Uruguay*.¹⁵³
118. The Committee has acknowledged that where an individual dies in custody, applicants face evidentiary difficulties in proving the precise cause and circumstances of death. In such a case, a violation of Article 6(1) will generally be found, unless an effective and timely investigation shows otherwise. In death in custody cases, “the burden of proof ... cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and ... frequently the State party alone has access to relevant information.”¹⁵⁴ Further, it held that:

“in cases where the author has submitted to the Committee allegations supported by substantial witness testimony ... and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider

¹⁵² *Eshonov v Uzbekistan*, UNHRC, Views of 22 July 2010, U.N. Doc. CCPR/C/9/D/1225/2003, para. 9.2.

¹⁵³ *Dermi Barbató v. Uruguay*, UNHRC, Views of 21 October 1982, U.N. Doc. CCPR/C/17/D/84/1981, at para. 9.2.

¹⁵⁴ *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. Supp. No. 40 (A/37/40) at 130 (Communication No. R.7/30), para. 13.3; *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, U.N. Doc. CCPR/C/51/D/458/1991, para. 9.2.

such allegations as substantiated in the absence of *satisfactory evidence and explanations* to the contrary submitted by the State party.”¹⁵⁵

119. A “thorough, prompt and impartial investigation” is required to rebut the presumption of a summary execution.¹⁵⁶ In this case, the Kyrgyz Republic has failed to investigate the circumstances and evidence in any meaningful way, and has provided an official explanation of suicide at odds with a number of pieces of available evidence. As a result of these deficiencies, the State’s claim that Mr. Ernazarov committed suicide is incapable of rebutting the presumption that he was unlawfully murdered.
120. The deficiencies of the investigation as a whole are addressed in detail below (see paras. 132-187 below). A number of these deficiencies demonstrate how the investigation systematically ignored evidence or circumstances which suggested that Mr. Ernazarov was mistreated in custody, that state officials were aware of this mistreatment, and that they ignored (and by their omissions facilitated) this mistreatment.
 - a) *Abuse in Custody.* The official autopsy report contains numerous indications that Mr. Ernazarov was abused while in custody (see para. 28 above), but the authorities failed to provide any proper explanation for those injuries. They also failed to examine allegations that Mr. Ernazarov was subject to physical and psychological abuse while in detention (see paras. 19, 47, 49, 52 and 65-66 above).
 - b) *Failure to transfer from police custody.* The State has failed to examine or explain why Mr. Ernazarov was not transferred out of police custody as ordered by the Prosecutor almost two weeks before his death (see paras. 17 and 18 above).
 - c) *Failure to locate or investigate the weapon.* There is no explanation for the failure to find any instrument used to kill Mr. Ernazarov in either the first or second inspection of the cell (see para. 38-39 above, and para. 165 below), whether the instrument was used for murder or suicide. Despite the absence of the weapon, it appears that the other occupants of the cell were not searched or examined, and the authorities never questioned whether Rakhmon and Shoiras Askarov actually gave the razor to Mr. Ernazarov (see para. 40 above, and para. 159 below).
 - d) *Inadequate forensic report.* The autopsy cannot be relied upon to provide an explanation of suicide for the death of Mr. Ernazarov due to its poor quality (see para. 169 below). The report began with an assumption of suicide (see para. 26 above) and failed to consider the relevance of the injuries which are inconsistent with this assumption, or to inquire how they were inflicted (see para. 25 above). An independent analysis of the report indicates that the state’s forensic conclusion regarding the cause of Mr. Ernazarov’s death was baseless, and that many indicators in the report actually weigh against the conclusion that his death was a suicide (see paras. 31-33 above, and paras. 168-169 below).
 - e) *Inadequate evaluation of suicide note.* The analysis of the alleged suicide note is not sufficiently reliable to support the conclusion of suicide. The analysis was not independent as it was conducted by the same institution that had custody of Mr. Ernazarov when he died. The report analysed pens, even though none was found in the cell (see para. 33-36 above). Mr. Ernazarov’s sisters affirm that the handwriting on the cigarette pack is not their brother’s, but the authorities failed to take this into account (see para. 58 above).

¹⁵⁵ *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. Supp. No. 40 (A/37/40) at 130 (Communication No. R.7/30), para. 13.3 (emphasis added)

¹⁵⁶ *Eshonov v Uzbekistan*, UNHRC, Views of 22 July 2010, U.N. Doc. CCPR/C/9/D/1225/2003, para. 9.2.

- f) *No psychological problems.* The evidence relied upon by the government to suggest that Mr. Ernazarov was suicidal is not sufficient, as it only comes from the cell-mates who were at the time potential suspects for the murder (see para. 38 above). According to all witnesses, Mr. Ernazarov was a physically and mentally strong person who never suffered any psychiatric disorder (see paras. 11-12 above).
121. The lack of a sufficiently thorough or impartial investigation means that the explanation of suicide is not plausible, let alone sufficient to override the presumption of state responsibility which this Committee's prior views impose in such cases. To the contrary, a number of factors – in particular the history of abuse that Mr. Ernazarov suffered in detention, the highly unusual nature of suicide by incised wounds to the neck, the failure to locate the weapon in a locked cell, and the presence of defensive wounds – strongly suggest that Mr. Ernazarov was murdered while in State custody.

C. Torture of Mr. Ernazarov: Article 7

122. The treatment inflicted upon Mr. Ernazarov while in detention amounts to treatment contrary to Article 7 of the ICCPR. This ill-treatment was inflicted upon him while in the custody of the police, and with the knowledge and complicity of the police. The Kyrgyz Republic is therefore responsible for the breach of Article 7 both for the infliction of this ill-treatment and for failing to prevent others from inflicting it upon him.
123. The prohibition of torture and cruel and inhuman treatment is absolute. This Committee has made it clear that “article 7 allows of no limitation”, and that it covers “not only acts which cause physical pain but also acts that cause mental suffering”.¹⁵⁷ There is no list of acts which do and do not constitute torture or inhuman treatment; rather, the assessment “depends on all the circumstances of the case, such as the duration and manner of the treatment, [and] its physical or mental effects”.¹⁵⁸ As part of this assessment, repeated beatings in custody have been found to constitute torture or cruel and inhuman treatment under Article 7, especially where the victim is denied medical care for their injuries.¹⁵⁹
124. Torture does not need to be inflicted by a state official to constitute a violation of Article 7. This Committee has explained that states have a duty “to afford everyone protection ... against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”¹⁶⁰ The positive obligation on states to prevent torture, including torture by private parties, applies in particular to protecting vulnerable prisoners in their custody from torture.¹⁶¹
125. In this case, the autopsy report demonstrates that Mr. Ernazarov suffered abuse while in custody that amounted to torture or cruel and inhuman treatment. In addition to the cuts on his neck which caused his death, he had suffered cuts on his hand and lower leg, and

¹⁵⁷ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, paras. 3, 5.

¹⁵⁸ *Vuolanne v Finland*, UNHRC, Views of 7 April 1989, U.N. Doc. CCPR/C/35/D/265/1987, para. 9.2. See also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 4.

¹⁵⁹ *Bailey v. Jamaica*, UNHRC Views of 31 March 1993, U.N. Doc. CCPR/C/47/D/334/1988, para. 9.2 – 9.3; *Linton v. Jamaica*, HRC, Views of 22 October 1992, U.N. Doc. CCPR/C/46/D/255/1987, para. 8.5.

¹⁶⁰ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 2.

¹⁶¹ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 11.

numerous abrasions on his abdomen, left forearm and left leg. He had also lost teeth from his upper jaw (see para. 28 above). These injuries are consistent with beatings. There is no record that Mr. Ernazarov received medical attention for these injuries. The statements by the police to Mr. Ernazarov's sisters when they tried to visit him, and by Mr. Ernazarov when they briefly saw him as he was being transferred from his cell, indicate that he was not beaten only on the day of his death, but rather was abused during the two weeks that he was detained by the police.

126. Mr. Ernazarov was also subjected to mental suffering while in detention. He was repeatedly insulted by his cell-mates, was forced to sleep and eat by the toilet bucket, and had his dish and spoon damaged to make eating more difficult (see para. 19 above). Both the physical and mental abuse of Mr. Ernazarov are consistent with the mistreatment of prisoners accused of certain sexual offences in the Kyrgyz Republic (see paras. 17 and 113 above).
127. Mr. Ernazarov suffered this abuse while in the custody of the police, who knew of the abuse and acquiesced to it, because the injuries would have been readily visible, and they would also have seen his damaged dish and spoon. One police officer told Mr. Akhmedov of the physical and mental abuse that Mr. Ernazarov suffered (see para. 19 above), and another told his sisters that Mr. Ernazarov "would be better off dead". Rather than intervene, the officer told the sisters that they should stop running after their brother (see para. 21 above). Regardless of whether the police actively participated in the abuse of Mr. Ernazarov, these statements confirm that the police both knew that he was being abused, and that they accepted and implicitly endorsed that abuse.
128. The mental suffering that was inflicted on Mr. Ernazarov would have been compounded by the circumstances in which the abuse occurred: he was in the custody of the state; the police knew he was being abused; and instead of stopping that abuse they told his family that he was better off dead. The combined effect of all the circumstances – the beatings inflicted while detained over two weeks, psychological abuse inflicted on Mr. Ernazarov, his status as a vulnerable prisoner, and the helplessness that resulted from the police acquiescence to his torture – constitute torture and a violation of Article 7 of the ICCPR.
129. As with deaths in custody, when a person is tortured in state custody the state will have total control of access to the evidence and the burden of proof cannot rest on the author of the communication alone.¹⁶² Rather, the burden will shift to the government to provide a satisfactory and plausible explanation supported by evidence. In this case, there is physical evidence that Mr. Ernazarov was tortured; and the state has failed to provide any explanation for how the bulk of his injuries were suffered. This is largely due to the state's refusal to investigate the evidence of torture at all, despite repeated requests by the family. In this case, the state has failed to discharge its burden.
130. The torture of Mr. Ernazarov is consistent with reports of the pattern of abuses in Kyrgyz detention facilities, in particular targeted at prisoners accused of certain sexual offences. The failure to investigate the torture is also consistent with a systemic failure to investigate allegations of torture or cruel treatment (see paras. 80-85 above).
131. The Kyrgyz Republic is responsible for a violation of Article 7 as a result of the torture, or the cruel and inhuman treatment, of Mr. Ernazarov while in the custody of the police.

¹⁶² *Bouroual v. Algeria*, UNHRC, Views of 30 March 2006, U.N. Doc. CCPR/C/86/D/992/2001, para. 9.4; *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, U.N. Doc. CCPR/C/15/D/30/1978, at para. 2.4, 13.3 and 14.

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

132. The Kyrgyz Republic failed to conduct an independent, impartial, thorough, timely, and effective investigation into Mr. Ernazarov's torture and death, in further violation of Articles 6(1) and 7 in conjunction with Article 2(3) of the ICCPR.
133. As noted above, the State's failure to provide a plausible explanation for his death in custody through an independent investigation gives rise to a presumption that Mr. Ernazarov was arbitrarily killed. In addition, the Human Rights Committee has made clear that the failure to conduct a proper investigation into a death in custody can constitute a separate violation of Article 6(1) of the ICCPR,¹⁶³ and of Article 2(3) which obliges State Parties to "ensure that individuals ... have accessible and effective remedies to vindicate [ICCPR rights]."¹⁶⁴ The Committee recently confirmed that the State must conduct "a thorough, prompt and impartial investigation" into any death in custody.¹⁶⁵ The obligation to investigate applies equally to torture and cruel and inhuman treatment under Article 7, with the Committee stating that complaints of torture "must be investigated promptly and impartially by competent authorities so as to make the remedy effective."¹⁶⁶ The obligation to provide an effective remedy for violations of the rights in the ICCPR "is central to the efficacy of article 2, paragraph 3,"¹⁶⁷ and "a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the [ICCPR]."¹⁶⁸
134. In the context of an alleged suicide in state custody, an effective investigation must be capable of both establishing whether the death was indeed a suicide, as opposed to being caused by a third party or by accident; as well as examining whether the authorities could have prevented that death.¹⁶⁹
135. Here, the Kyrgyz Republic failed to conduct a satisfactory investigation into the torture and death of Mr. Ernazarov for the following reasons:
- *1. Lack of Independence and Impartiality.* The investigation was not conducted in an independent and impartial manner.
 - *2. Undue Delay.* The investigation was not conducted or completed promptly.
 - *3. Inadequacy.* The investigation failed to undertake a number of essential steps.
 - *4. No Participation.* Mr. Ernazarov's family were excluded from the investigation, despite their best efforts.
 - *5. Lack of Transparency.* The investigation was conducted in private and no final report was published.
 - *6. No Finding of Responsibility.* The investigation did not lead to any prosecutions but only to some mild disciplinary sanctions which were not even fully enforced.

¹⁶³ *Telitsina v Russian Federation*, UNHRC, Views of 29 March 2004, U.N. Doc. CCPR/C/80/D/888/1999, at para. 7.6.

¹⁶⁴ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

¹⁶⁵ *Eshonov v Uzbekistan*, UNHRC, Views of 22 July 2010, U.N. Doc. CCPR/C/9/D/1225/2003, para. 9.2.

¹⁶⁶ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 14.

¹⁶⁷ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 16.

¹⁶⁸ *Ibid.* para. 15.

¹⁶⁹ *Trubnikov v. Russia*, ECtHR, Judgment of 5 July 2005, at para. 89.

1. Lack of independence and impartiality

136. The investigation was not independent because it was conducted by the Ministry of Internal Affairs, which is the institution in whose custody Mr. Ernazarov was tortured and killed with the knowledge and acquiescence of police officers who were part of that same institution. The investigation was also not impartial because it never considered any possible cause of death other than that Mr. Ernazarov committed suicide.
137. Investigations of deaths in custody and torture must be both independent and impartial. General Comment No. 31 states that the right to an effective remedy under Article 2(3) involves “the general obligation to investigate allegations of violations ... thoroughly and effectively through independent and impartial bodies.”¹⁷⁰ This requirement is clearly defined in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (“the Minnesota Principles”), which specifically provide that

“[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death”.¹⁷¹

The same principles apply to investigations of torture under the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Principles”),¹⁷² which have been endorsed by the UN General Assembly and the UN Commission on Human Rights.¹⁷³

138. Independence requires that the authorities charged with investigating deaths in custody must be practically independent. In the context of an investigation into torture the Istanbul Principles require that the investigators “shall be independent of the suspected perpetrators and the agency they serve”,¹⁷⁴ and the ECtHR has held that

“the persons responsible for the inquiries and those conducting the investigation should be independent of anyone implicated in the events This means not only that there should be no hierarchical or institutional connection but also that the investigators should be independent in practice.”¹⁷⁵

¹⁷⁰ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

¹⁷¹ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65, 24 May 1989, para. 9 & 11 (“Minnesota Principles”).

¹⁷² Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 2. These principles are set out in Annex I to the Istanbul Protocol: United Nations Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Professional Training Series No. 8/Rev.1, at para. 214 (2004) (“Istanbul Protocol”). Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

¹⁷³ UN General Assembly Resolution 55/89; UN Commission on Human Rights Resolution 2000/43.

¹⁷⁴ Istanbul Principles, note 172 above, para. 2.

¹⁷⁵ *Bati and Others v. Turkey*, ECtHR, Judgment of 3 September 2005, at para. 135.

This principle is reflected in the recommendations of this Committee that the police not be responsible for investigating allegations of torture which may implicate their own officers.¹⁷⁶

139. The Minnesota Principles indicate that “In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure.”¹⁷⁷ In addition, an impartial investigation must be directed at uncovering the facts regarding what happened to the victim. Such an investigation cannot “rely on hasty ... conclusions to close their investigation or as the basis of their decision.”¹⁷⁸
140. In Mr. Ernazarov’s case, the investigation was not independent in practice. The internal check was conducted by the Ministry of Internal Affairs’ Department of Internal Security.¹⁷⁹ His death was thus being investigated by the same Ministry which was responsible for his detention and had custody of him at the time of his death. The Ministry of Internal Affairs had an interest in protecting the police, who form part of that same Ministry, and thus an interest in ignoring the allegations of torture in which the police may have been complicit and ensuring that the investigation concluded that Mr. Ernazarov’s death was a suicide. The state had not taken sufficient and rigorous measures, or in this case any measures, to ensure the investigation taken by a department within the same Ministry was truly independent and free from any pressure or influence.
141. The bulk of the criminal investigation was also carried out by the police. Although a public prosecutor was assigned to the criminal investigation to supervise the police, this is not sufficient to secure its independence. The prosecutor in practice relies upon the evidence gathered and reports generated by the police. The fact that an investigation is overseen by a nominally independent official or body is not sufficient to make that investigation independent, unless the supervision is genuinely independent.¹⁸⁰ Such a lack of independence of prosecutors in Kyrgyzstan is supported by the observations of the UN Special Rapporteur, who found no prosecutions for torture or ill treatment in Kyrgyzstan at the time of Mr. Ernazarov’s death, and observed that “[i]n particular, prosecutors often appear unwilling to initiate criminal prosecutions in this regard” (see para. 81 above).
142. To compound matters, although the Kyrgyz Republic’s judicial system is theoretically an independent branch of the government, it is actually under the influence of the prosecutor,¹⁸¹ as the Special Rapporteur further confirmed (see paras. 81-82 above). In this

¹⁷⁶ UNHRC, Concluding Observations on Hong Kong (1996), U.N. Doc. CCPR/C/79/Add. 57, para. 11; Concluding Observations on Kenya, (2005) U.N. Doc. CCPR/CO/83/KEN, para. 18; Concluding Observations on Slovenia, (2005) U.N. Doc. CCPR/CO/84/SVN, para. 9. The UN Special Rapporteur on Torture made similar observations: see e.g. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Mission to Kazakhstan*, U.N. Doc A/HRC/13/39/Add.3, para. 49.

¹⁷⁷ Minnesota Principles, see note 171 above, at para. 11.

¹⁷⁸ *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, at para. 69.

¹⁷⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer), at para. 35.

¹⁸⁰ *Jordan v UK*, ECtHR Judgment of 4 May 2001, in particular at paras. 123-124; see also *Ergi v. Turkey*, ECtHR Judgment of 28 July 1998, at paras. 83-84; *Kelly and others v UK*, ECtHR Judgment of 4 May 2001, paras. 95 and 114.

¹⁸¹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov’s family’s lawyer) at para. 63; Exhibit 43: Diagram of Political Structure of the Kyrgyz Republic.

case, the Osh City Court and Osh Regional Court repeatedly held that the failure of the prosecution to take action is not subject to judicial review (see para. 67 to 78 above). Given that the police conducted the investigation, any oversight provided by the prosecutor or the courts was not effective in light of the prosecution's pattern of failing to charge cases of torture and deaths in custody and the deference of the Courts to the prosecution. The investigation therefore could not have been independent in practice.

143. In addition to lacking independence, the investigation into Mr. Enazarov's death was not impartial. From the very beginning of the investigation it was assumed that his death was suicide. The autopsy was ordered on the day of his death, and the report records that

“It is known from the order that ‘On 20 November 2005, at about 0600 hours, in room No. 3 of the Temporary Detention Facility in the Directorate of Internal Affairs of the city of Osh, the prisoner Rakhmonberdi Ernazarov, 1961, cut his throat for the purpose of committing suicide.’” (see para. 25 above).

During the examination, the examiner did not consider essential questions regarding the precise timing of the lethal injuries, the timing of the other injuries, or the mechanism of inflicting the injuries. This bias was compounded in the January 2006 review of the initial autopsy, in which Prosecutor Saidamatov asked the review only whether the cut wounds could have been self-inflicted, and the review therefore did not question or examine whether the wounds could have been inflicted by a third party (see para. 50 above).

144. The deficiencies in the investigation demonstrate this lack of impartiality. Lines of inquiry which were inconsistent with the assumption of suicide were not pursued (see para. 120 above, and paras. 159-170 below). Evidence which could have corroborated or contradicted the verdict of suicide either was not gathered (see paras. 159-160 below) or was not examined until almost nine months after Mr. Ernazarov's death (see para. 150 below). The approach to the investigation reflected the initial assumption about the cause of Mr. Ernazarov's death. This was not an investigation which was aimed at, and capable of, establishing the facts and identifying and bringing to justice those responsible. Rather, it was one in which the state relied on hasty conclusions to close their investigation.

2. Undue Delay in the Investigation

145. The investigation was not effective because it was not conducted expeditiously and there were numerous delays. There were significant delays in searches for evidence, scientific analysis, and the investigation process, ultimately leading to the suspension of the inquiry. Even when the Supreme Court ordered the investigation to re-commence, nothing was done.
146. Any investigation must be both commenced promptly and then conducted with expedition. The Committee has stated that “[c]omplaints [of ill-treatment] must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”¹⁸² In particular, in relation to ill-treatment of detainees the Committee has reiterated that “the State party is under an obligation to investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment of inmates.”¹⁸³

¹⁸² UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, at para.14.

¹⁸³ *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, U.N. Doc. CCPR/C/55/D/373/1989, at para. 9.2; *Spence v. Jamaica*, UNHRC, Views of 20 October 1994, UN Doc. CCPR/C/57/D/599/1994, at para. 9; see also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, at para. 14.

147. The Committee against Torture has confirmed that promptness relates not only to the time within which an investigation is commenced, but also to the expediency with which an investigation is conducted. A delay of three weeks to launch an investigation into an allegation of torture,¹⁸⁴ together with unexplained gaps in the investigation of between one and three months was found to be an unacceptable delay.¹⁸⁵ In 2008 the Committee against Torture also noted with regard to Kazakhstan that “the lengthy period for preliminary examination of torture complaints, which can last up to two months, may prevent timely documentation of evidence.”¹⁸⁶
148. Judgments of the ECtHR also provide guidance on the requirements of prompt investigation,¹⁸⁷ and consider as relevant the start of the investigation,¹⁸⁸ delays in taking statements,¹⁸⁹ and the length of time taken during initial investigations.¹⁹⁰ The Court has concluded that an investigation should be undertaken promptly in order to recover and preserve evidence, including medical evidence and witness statements (when memories are fresh), related to the alleged torture to aid in any potential prosecution of those responsible.¹⁹¹
149. In this case, numerous delays and interruptions tainted the investigation. Mr. Ernazarov was found dead in his cell on 20 November 2005. Although the criminal investigation was commenced on 21 November 2005, initial steps such as the search of his cell were inadequate and failed to uncover or record key evidence. A proper search of his cell did not take place until a week after the criminal investigation was launched (see para. 39 above). No explanation has been given for the delay in conducting this second search, and there does not appear to be any analysis of who had access to the scene in the period between the death of Mr. Ernazarov and the discovery of the note, making the search largely pointless.
150. Once located, the analysis of that note was also unnecessarily delayed. The note was not analysed by the Ministry of Internal Affairs until almost nine months later, on 15 August 2006.¹⁹²
151. In addition, key witnesses have never been interviewed (see para. 166 below). The delay in conducting key investigative steps, especially in interviewing witnesses, compromised the ability of the authorities to uncover key evidence that is critical to an accurate determination of the cause of Mr. Ernazarov’s death.

¹⁸⁴ Fifteen days before the complaint was taken up by a judge and another four days before an itself inquiry was launched.

¹⁸⁵ *Encarnación Blanco Abad v. Spain*, UNCAT, Views of 14 May 1998, U.N. Doc. CAT/C/20/D/59/1996, at para. 8.7.

¹⁸⁶ UNCAT, *Concluding Observations on Kazakhstan*, U.N. Doc. CAT/C/KAZ/CO/2, 12 December 2008, at para. 24. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.KAZ.CO.2.doc> (“CAT 2008 Concluding Observations on Kazakhstan”),

¹⁸⁷ *Bati and Others v. Turkey*, ECtHR Judgment of 3 September 2005, at para. 136 (stating that “[i]t is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context.”); *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 98 (while it is “true that no express provision exists in the Convention as such as can be found in Article 12 of the 1984 United Nations Convention against Torture ... which imposes a duty to proceed to a ‘prompt and impartial’ investigation whenever there is a reasonable ground to believe that an act of torture has been committed ... such a requirement is implicit in the notion of an ‘effective remedy’ under Article 13.”).

¹⁸⁸ *Çiçek v. Turkey*, ECtHR Judgment of 27 February 2001, at para. 149; *Tekin v. Turkey*, ECtHR Judgment of 9 June 1998, at para. 67; *Labita v. Italy*, ECtHR Judgment of 6 April 2000, at para. 133.

¹⁸⁹ *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998, at para. 103.

¹⁹⁰ *Labita v. Italy*, ECtHR Judgment of 6 April 2000, at para. 133-236.

¹⁹¹ See e.g. *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998.

¹⁹² Exhibit 46: Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack.

152. Some of these delays resulted from suspensions of the investigation. The investigation was suspended on 6 February 2006, although the Osh Prosecutor's Office did not inform the family or their lawyer of this until 23 March 2006. After a petition by the family, the criminal investigation was re-opened on 30 June 2006. Once reopened, the investigation did not progress expeditiously. Rather, it appears that the only investigative step since the reopening has been the belated and flawed analysis of the alleged suicide note (see paras. 58-61 above).
153. Even after the Supreme Court ordered the City Court to grant the request by Mr. Ernazarov's family that the investigation be re-opened, on 13 March 2008 (see para. 77 above), the case was fatally delayed due to the fact that the Osh City Court could not locate Mr. Ernazarov's brother's written complaint among the case materials and therefore refused to rule on the request.¹⁹³ Today, to the best of the family's knowledge, the criminal investigation into Mr. Ernazarov's death remains suspended.¹⁹⁴

3. Inadequacy of the Investigation

154. The investigation was not effective because it failed to undertake a number of steps that were essential for an adequate investigation. The authorities (a) did not obtain and preserve important evidence, (b) did not investigate or explain the failure to protect a vulnerable prisoner, (c) did not interview key witnesses, and (d) did not conduct a reliable forensic medical examination. The Prosecutor-General's office agreed that the investigation had been "superficial"¹⁹⁵ (see para. 58 above), although none of these flaws were subsequently remedied.
155. The Human Rights Committee has explained that "the State party has a duty to investigate *thoroughly* alleged violations of human rights, particularly enforced disappearances *and violations of the right to life*."¹⁹⁶ It has also repeatedly held that States Parties must investigate alleged ill-treatment of detainees as expeditiously and thoroughly as possible,¹⁹⁷ a principle which applies equally to the death of a detainee in custody. This means that the authorities must make a serious attempt to learn what happened: investigations must be thorough in seeking to ascertain the material facts,¹⁹⁸ "should not rely on hasty or ill-

¹⁹³ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer) at para. 62.

¹⁹⁴ Exhibit 29: Letter from Deputy Prosecutor of Osh City to Mr. Ernazarov's Brother dated 13 November 2006.

¹⁹⁵ Exhibit 23: Letter from Dzh. Kazakow at Prosecutor General's Office to Mamatkarim Ernazarov (Mr. Ernazarov's brother) dated July 10, 2006.

¹⁹⁶ *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, UN Doc. CCPR/C/60/D/612/1995, at para. 8.8 (emphasis added). See also *Arhuacos v. Colombia*, UNHRC, Views of 19 August 1997, U.N. Doc. CCPR/C/60/D/612/1995, at para. 8.8; and *Bautista v. Colombia*, UNHRC, Views of 13 November 1995, U.N. Doc. CCPR/C/55/D/563/1993, at para. 8.6.

¹⁹⁷ *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, U.N. Doc. CCPR/C/55/D/373/1989, at para. 9.2; *Irvine Reynolds v. Jamaica*, UNHRC, Views of 3 April 1997, U.N. Doc. CCPR/C/59/D/587/1994, at para. 12.

¹⁹⁸ *Ristic v. Yugoslavia*, UNCAT, Views of 11 May 2001, U.N. Doc. CAT/C/26/D/113/1998, at para. 9.6 (holding that a proper investigation would have included additional more thorough steps, such as an exhumation and new autopsy).

founded conclusions to close their investigation or as the basis of their decisions,¹⁹⁹ and must take all reasonable steps to secure the evidence concerning the incident.²⁰⁰

156. The Minnesota Principles confirm that “there shall be a thorough, prompt and impartial investigation” of a death in custody case, and state that the purpose of the investigation should be to “determine the cause, manner and time of death, the person responsible, and any pattern or practice that may have brought about the death”.²⁰¹ The “Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions” (Minnesota Protocol) elaborates on the standards for an effective investigation of a death in custody.²⁰² The objectives of an effective investigation include “to recover and preserve evidentiary material related to the death”, “to identify possible witnesses and obtain statements”, to determine the manner of death “as well as any pattern or practice which may have brought about the death”. The procedures required to meet these objectives include (i) full processing of the potential crime scene, including photographing the scene, examination of any blood, examining fingerprints, and recording the identity of those present; (ii) identifying and locating the weapon used; (iii) interviewing family members of the victim, and others who observed the victim and scene in the weeks preceding the death; and (iv) conduct of an independent and thorough autopsy.
157. The ECtHR has also identified a number of steps that state authorities should take in order for an investigation to be effective,²⁰³ including (i) taking fingerprints; (ii) taking the initiative to investigate all the circumstances of the abuse; (iii) taking reasonable steps to “secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence”;²⁰⁴ and (iv) “where appropriate, a visit to the scene of the crime.”²⁰⁵ Another key step is performing a medical examination that fully examines the injuries on a victim’s body, and thus when a death is at issue an effective investigation involves an autopsy “which provides a complete and accurate record of the possible signs of ill-treatment and injury and an objective analysis of clinical findings, including the cause of death.”²⁰⁶

a. Failure to obtain and preserve important evidence

158. The authorities failed to obtain and preserve a number of important sources of evidence related to Mr. Ernazarov’s death.
159. *Failure to locate weapon.* The authorities failed to locate the weapon used in Mr. Ernazarov’s death. Mr. Ernazarov was found unconscious in a locked cell. Two searches of that cell failed to produce the instrument that caused his injuries (see para. 23, 38-40 & 120.c) above). This conflicts with the conclusion of suicide as if Mr. Ernazarov had used a

¹⁹⁹ *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, at para. 69 (citing *Assenov and Others v. Bulgaria*, ECtHR, Judgment of 28 October 1989, at para. 103).

²⁰⁰ *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, at para. 69 (citing *Tanrikulu v. Turkey* [GC], ECtHR, Grand Chamber Judgment of 8 July 1999, paras. 104ff and *Gül v. Turkey*, ECtHR, Judgment of 14 December 2000, para. 89).

²⁰¹ Minnesota Principles, see note 171 above, at para. 9.

²⁰² The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991) (“Minnesota Protocol”).

²⁰³ *Salman v. Turkey*, ECtHR, Judgment of 27 June 2000, at para. 106 (in the context of a right to life investigation); *Tanrikulu v. Turkey* [GC], ECtHR, Grand Chamber Judgment of 8 July 1999, at para. 109; *Gül v. Turkey*, ECtHR, Judgment of 2002, at para. 89.

²⁰⁴ *Paul and Audrey Edwards v. the United Kingdom*, ECtHR, Judgment of 14 March 2002, at para. 71.

²⁰⁵ *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, ECtHR, Judgment of 27 June 2006, at para. 88.

²⁰⁶ *Gül v. Turkey*, ECtHR, Judgment of 2002, at para. 89; *Salman v. Turkey*, ECtHR, Judgment of 27 June 2000, at para. 105.

razor to commit suicide in a locked cell one would expect it to be found with him. It is unclear whether the authorities searched the other men who were in the cell at the time of Mr. Ernazarov's death. There is also no indication that the authorities questioned Mr. Askarov and Ms. Shoiras Askarova regarding the allegation that they gave the razor to Mr. Ernazarov (see para. 39 above), checked whether they visited Mr. Ernazarov, or otherwise investigated how a razor could have been given to Mr. Ernazarov in custody.

160. *No proper record of the crime scene.* The authorities did not make a proper record of the scene where Mr. Ernazarov was found. They did not record the position in which Mr. Ernazarov was found, any information regarding the presence and pattern of blood, or any evidence of a struggle. No photographs were taken of the scene. In addition, there is no record that the clothing of the other men in the cell was seized for scientific analysis for the presence of blood, or that there were examined for signs that they participated in a struggle in or the killing of Mr. Ernazarov. They failed to record and preserve information which Physicians for Human Rights considered "critical in establishing the manner of death."²⁰⁷
161. *Inadequate analysis of alleged suicide note.* The analysis of the alleged suicide note written inside a cigarette packet was inadequate. The only writing sample used was taken from the criminal investigation against Mr. Ernazarov, conducted by the Ministry of Internal Affairs. The report claims that three pens were produced, and that one of these pens had been used to write the note, even though there is no record of any pens being recovered from the cell.
162. *Failure to obtain fingerprints.* It also appears that the authorities did not obtain any fingerprints from the cigarette package which contained the alleged suicide note, or from the pens which the authorities claimed had been used to write that note.

b. Failure to investigate the circumstances

163. The investigation did not address the circumstances by which a vulnerable prisoner was placed in a cell with six other men for over two weeks, and why the authorities failed to transfer Mr. Ernazarov to a more secure detention facility. On 7 November 2005, a prosecutor ordered that Mr. Ernazarov be transferred to a Ministry of Justice pre-trial detention centre, as required by law. There was no impediment to this transfer, as the Ministry of Justice facility is just across the street from the police station (see para. 18 above). This failure to transfer Mr. Ernazarov, in violation of domestic law and the prosecutor's order, was never explained.
164. The investigation also did not address the abuse of Mr. Ernazarov in detention, which is evidenced by the numerous injuries recorded in the autopsy; nor did it address the failure of the police authorities to intervene despite the fact that they knew of the abuse that Mr. Ernazarov was suffering (see paras. 20-21 and 27-28 above).

c. Failure to interview key witnesses

165. The authorities failed to interview a number of key potential witnesses during the investigation. The resulting evidence loss may be permanent due to the passage of time.
166. In addition to the failure to interview Mr. Askarov and Ms. Shoiras Askarova regarding the allegation that they provided the razor blade, a number of witnesses who could have testified to the abuse suffered by Mr. Ernazarov in custody and the danger to his life were not interviewed. Mr. Ernazarov's sisters (Lolakhon Ernazarova and Shakhribanu Anarbaeva) and Investigator Raimberdiyev are key witnesses in relation to his ill-treatment in prison and the motivation behind it. Mr. Raimberdiyev told Mr. Ernazarov's sisters that

²⁰⁷ Exhibit 47: Physicians for Human Rights, Report on the Death of Rakhmanberdi Ernazarov (6 July 2010), at p. 2.

Mr. Ernazarov's life was at risk.²⁰⁸ The authorities also failed to interview guards who could have confirmed that Mr. Ernazarov's dish and spoon was damaged to prevent him from eating.²⁰⁹ It appears that some of the men who were in the cell at the same time as Mr. Ernazarov were questioned, although the circumstances of the questioning are unclear, despite the fact that they would be prime suspects for his murder.

d. Failure to conduct a reliable forensic medical investigation

167. The investigation was also ineffective because the 20 November 2005 autopsy was inadequate and unreliable, and because other important medical evidence was not collected.

168. The Minnesota Principles state that the investigation shall “distinguish between natural death, accidental death, suicide and homicide”,²¹⁰ and detail that an autopsy

“shall, at minimum, establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy must describe any and all injuries to the deceased including any evidence of torture.”²¹¹

The Minnesota Protocol emphasises the importance of photographing the autopsy and the need to identify possible “‘defence’ wounds”.²¹² The independence and accuracy of an autopsy is particularly important because its medical evaluation is central to an effective investigation of a death in custody.

169. In this case, the Physicians for Human Rights Report concluded that the autopsy report contained contradictory descriptions of the fatal injuries and failed to establish the manner of death (see paras. 31-33 above). In addition to these breaches of core requirements of an effective autopsy, the Physicians for Human Rights Report identified other omissions in the forensic examinations which violated the Minnesota Protocol, in particular the failure to photograph the crime scene (including the presence of blood) or the autopsy. The failure to record the autopsy with photographs also meant that the January 2006 review of its findings was asked to comment on whether the wounds could have been self-inflicted without ever observing the wounds in question.

170. The autopsy also did not consider the other injuries, and whether they reveal any pattern or practice related to Mr. Ernazarov's death. The report lacks specificity concerning Mr. Ernazarov's missing teeth, simply stating that “visible teeth in the upper jaw are absent” (see para. 28 above). Because Mr. Ernazarov's missing teeth are a clear sign of abuse, the autopsy should have inquired why the teeth were missing. In addition to the deficiencies in the physical description of Mr. Ernazarov's injuries, the report failed to ask key questions including when the non-lethal injuries on his forearms, ankles and abdomen were inflicted, the precise timing of the two lethal injuries on his neck, and the mechanism of inflicting of all the injuries.

4. No Opportunity for Participation by the Victim's Family in the Investigation

171. The investigation also was not effective because the family of Mr. Ernazarov were not kept informed of the progress of the investigation or allowed to participate at appropriate stages.

²⁰⁸ Exhibit 6 and Exhibit 8: Statement of Lolakhon Ernazarova & Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sisters), at para. 8.

²⁰⁹ Exhibit 4: Statement of Saidkamal Akhmedov (Mr. Ernazarov's family lawyer), at para. 17.

²¹⁰ Minnesota Principles, see note 171 above, at para. 9.

²¹¹ Minnesota Principles, see note 171 above, para. 13.

²¹² Minnesota Protocol, see note 202 above, section IV, B, 2, (c) and (g)(xv).

172. This Committee has found that for an investigation to be deemed “effective” it must include some degree of family involvement.²¹³ At a minimum, family members of the victim must be informed of the outcome of the investigation into the alleged abuses by the state.²¹⁴ The Minnesota Principles provide that the family has a right to be involved in the investigations and should “[b]e informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.”²¹⁵ In particular, in a forensic evaluation “[t]he family of the deceased have a right to insist that a medical or other qualified representative be present at the autopsy.”²¹⁶ The ECtHR has held that “necessary” family involvement includes access to materials in the investigation, knowledge of the progress of the investigation to allow them to participate (for example in the instruction of experts), and knowledge of the outcome of the investigation.²¹⁷
173. Throughout the investigation, the family of Mr. Ernazarov were excluded. His sisters recount that “[t]he police officers and the investigators did not want to hear anything that my family and I had to say and they did not want us to ask questions” and that “it was very difficult to obtain any assistance or cooperation from the government. Neither the investigators nor the police wanted to provide us with any information”²¹⁸
174. Despite the family’s repeated requests, they were not informed of the progress of the investigation. The family’s lawyer Mr. Akhmedov submitted seven petitions on behalf of the family to the Osh City Prosecutors Office and numerous other officials (see para. 39 to 54 above), yet the family never received a substantive response and was not provided with the official results of the internal investigation.
175. The family also never received a response to their request for an investigation of the allegations that Mr. Ernazarov was tortured (see paras. 56 and 63 above). On 16 August 2006, the family’s lawyer applied to the Osh City Court asking that the Prosecutor’s Office act on his 2 June 2006 complaint, and setting out a long list of necessary investigative steps. This application was not ruled on by the Court, but was eventually transferred back to the Osh City Prosecutor’s Office which never gave the family a response addressing the concerns that they raised or provided the information on the outcome of the investigation requested (see paras. 66 to 68 above).
176. The family was denied the right to have an independent medical expert present at, or to submit questions concerning, the original autopsy on 20 November 2005 (see para. 25 above). They were again denied these rights in the forensic review of 16 January 2006, as they were not informed of that review until the results were presented (see para. 50 above). This meant that the family were not able to challenge the pre-determination that Mr. Ernazarov committed suicide.

²¹³ *El Hassy v. Libyan Arab Jamahiriya*, UNHRC, Views of 24 October 2007, U.N. Doc. CCPR/C/91/D/1422/2005, para. 8.

²¹⁴ *Ibid.*

²¹⁵ Minnesota Principles, see note 171 above. para. 16.

²¹⁶ *Ibid.*

²¹⁷ *Trubnikov v. Russia*, ECtHR Judgment of 5 July 2005, at para. 93; *Kucheruk v. Ukraine*, ECtHR Judgment of 6 September 2007, at para. 158; *Ogur v. Turkey*, ECtHR Judgment of 20 May 1999, at para. 92.

²¹⁸ Exhibit 6: Statement of Lolakhon Ernazarova, paras. 12 and 15; Exhibit 8: Statement of Shakhribanu Anarbaeva (Mr. Ernazarov’s sisters), at paras. 12 and 15.

177. Lastly, the family were not involved in the conduct of the August 2006 handwriting analysis, and so were not able to provide samples of handwriting of Mr. Ernazarov or raise concerns as to the way in which it was carried out.

5. Lack of Transparency of the Investigation

178. The investigation into the abuse and death of Mr. Ernazarov was not conducted with the degree of transparency that is required under international law. This includes the need to ensure public awareness of the existence of such investigations; to conduct hearings in public where appropriate; and to make the details and the outcome of such investigations public.
179. For an investigation to be “effective”, international law requires both that the process of the investigation be public and that its results be published. The Istanbul Principles require that “[t]he methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.”²¹⁹ The Committee against Torture has recommended the establishment of a centralized public register of both complaints of torture and ill-treatment and of the results of investigations, to ensure openness and impartiality.²²⁰ It also requires that “every allegation of torture [is] thoroughly investigated and the results made public.”²²¹
180. Both the Istanbul and Minnesota Principles recommend that investigations should be carried out by an “independent commission of inquiry or similar procedure”.²²² There should be “wide notice of the establishment of a commission and the subject of the inquiry” so as to allow witnesses to come forward, and that investigation hearings “should be conducted in public, unless in-camera proceedings are necessary to protect the safety of a witness.”²²³ The Istanbul Principles requires that the inquiry should issue a written report within a reasonable time that includes “the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public.”²²⁴
181. The investigations into the torture and death in Mr. Ernazarov have effectively been conducted behind closed doors. The complaints and evidence that he was tortured have not even been officially acknowledged, let alone investigated in a transparent manner.
182. The results of those investigations also have not been published. The results of the internal check into Mr. Ernazarov’s death were not made publicly available. Mr. Akhmedov petitioned the Ministry of Internal Affairs for the results of the internal check twice, and copied the Ministry on several other petitions to the Osh City Prosecutor’s Office and the Prosecutor General’s Office (see paras. 42-63 above), but still has not received many details of the investigation or a formal copy of the results. Likewise, the Public Prosecutor’s Office did not issue a public report of the findings of its autopsy, failed to release any account of its questioning of Mr. Ernazarov’s cellmates, and did not report the

²¹⁹ Istanbul Principles, see note 172 above, at Article 5.

²²⁰ Concluding Observations of the Committee against Torture, U.N. Doc A/56/44, 2001, para. 97(e). The CPT also considers that public authorities should “register all representations which could constitute a complaint.” (*The CPT Standards*, see note 147 above, at 88).

²²¹ Committee against Torture, Summary Record of the 245th Meeting, U.N. Doc. CAT/C/SR.245, 11 June 1996, para. 37; see also Nowak and McArthur, *The United Nations Convention against Torture: A Commentary* (Oxford: Oxford University Press, 2008) at 437.

²²² Istanbul Principles, see note 172 above, Article 5(a); Minnesota Principles, see note 171 above, Article 11.

²²³ Istanbul Protocol, see note 172 above, Articles 113 and 114.

²²⁴ Istanbul Principles, see note 172 above, Article 5(b).

overall outcome of the investigation. Instead, the only information provided was a notice given to Mr. Akhmedov that the investigation would be suspended due to an inability to identify and locate the perpetrators (see para. 56 above).

6. No Finding of Responsibility

183. The investigations into the death of Mr. Ernazarov were so hindered by the acts and omissions of the police that they were not capable of bringing to justice those responsible for his torture and death.
184. This Committee has explained that “[a]s with the failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant”, and that this is an obligation which applies in particular to violations of Articles 6 and 7.²²⁵ The Committee against Torture has confirmed that investigations should seek to ascertain the facts and identify the perpetrators.²²⁶
185. The ECtHR has held that, to satisfy the investigative requirement of the prohibition on torture, an investigation should be capable of leading to the identification and punishment of those responsible and that it “must be ‘effective’ in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities”.²²⁷ The Inter-American Court has also found that the State is under a legal duty “to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victims adequate compensation.”²²⁸ This duty “requires punishment not only of material authors, but also of the intellectual authors of those acts.”²²⁹
186. Disciplinary proceedings are insufficient to satisfy this requirement. This Committee has found that “if the violation that is the subject of the complaint is particularly serious ... remedies of a purely disciplinary and administrative nature cannot be considered sufficient or effective.”²³⁰ Where there are criminal proceedings, the sentence imposed must reflect the gravity of the conduct, as “the imposition of lighter penalties and the granting of pardons ... are incompatible with the duty to impose appropriate punishment.”²³¹ The European Court found a violation of human rights standards where judges had “exercised their discretion more in order to minimize the sentence of an extremely serious unlawful act than to show that such acts can not be tolerated” and held that the criminal system was not

²²⁵ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 18; see also UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 15.

²²⁶ *Encarnación Blanco Abad v. Spain*, UNCAT, Views of 14 May 1998, U.N. Doc. CAT/C/20/D/59/1996, para. 8.8; *Dzemajl v Yugoslavia*, UNCAT, Views of 21 November 2002, U.N. Doc. CAT/C/29/D/161/2000, para. 9.4.

²²⁷ *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 95.

²²⁸ *Velásquez-Rodríguez v. Honduras*, IACtHR, Judgment of 29 July 1988, at para. 187.

²²⁹ *Corumbiara Massacre v. Brazil*, IACommHR, Case 11.566, Report No. 32/04, at para. 256.

²³⁰ *Coronel et al. v. Colombia*, UNHRC, Views of 24 October 2002, UN Doc. CCPR/C/76/D/778/1997, para. 6.2.

²³¹ *Guridi v. Spain*, UNCAT, Decision of 8 February 2002, U.N. Doc. CAT/C/34/D/212/2002, at para. 6.7, where Civil Guards convicted of torture had their sentenced of four years reduced to one year, and were then given a pardon.

sufficiently dissuasive and the “outcome of the disputed proceedings did not provide appropriate redress.”²³²

187. In this case, the investigation failed to ascertain and attribute criminal responsibility for Mr. Ernazarov’s torture and death. Due to its many deficiencies, the criminal investigation did not lead to any criminal trial for the death of Mr. Ernazarov. The internal check by the Ministry of Internal Affairs only led to very mild disciplinary sanctions against police officers: one oral warning, one order to strengthen control over staff, and a sanction for unsatisfactory organization of work. This last sanction was not actually imposed because the officer was already under a strict warning for an earlier offence (see para. 46 above). In addition, neither of the investigations led to any findings of responsibility for the torture of Mr. Ernazarov as a result of the authorities’ failure to consider or respond to the family’s complaints in this regard.

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

188. International law requires that there are legal remedies for torture and deaths in custody, including compensation. However, the law in the Kyrgyz Republic has prevented Mr. Ernazarov’s family from bringing civil proceedings for compensation for his death.
189. Article 2(3) ICCPR has been interpreted by this Committee as placing an obligation on States to use their resources not only to investigate and punish violators, but also to compensate victims of human rights violations.²³³ This Committee has stated that “States may not deprive individuals of the right to an effective remedy, including compensation.”²³⁴ It has explained that the nature of the remedy – whether judicial, administrative or other – should be in accordance with the rights violated and the effectiveness of that remedy in granting appropriate relief for the violation:²³⁵ “[i]f the alleged offence is particularly serious, as in the case of violations of basic human rights ... purely administrative and disciplinary remedies cannot be considered adequate and effective.”²³⁶ The Committee against Torture has also stated that the State must establish a system to provide compensation where its agents are implicated in torture, regardless of whether those agents have been identified and thus held responsible.²³⁷
190. As part of the general right of access to a court, the ECtHR has found that the duty to provide effective remedies to victims of ill-treatment includes compensation.²³⁸ Similarly, the Inter-American Court has established that for remedies to be effective, they must be

²³² *Okkali v. Turkey*, ECtHR, Judgment of 12 February 2007, at para. 78, where police officers convicted of offences amounting to torture received a sentence of one year imprisonment and suspension from duty for three months.

²³³ UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

²³⁴ UNHRC, *General Comment 20, Article 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, para. 15.

²³⁵ UNHRC, Concluding Observations on Finland, UN Doc. CCPR/C/79/Add.91, 4 August 1998, para. 10.

²³⁶ *Vicente et al v. Colombia*, UNHRC, Views of 19 August 1997, U.N. Doc. CCPR/C/60/D/612/1995, at para. 5.2; *de Arellana v Colombia*, UNHRC, Views of 27 October 1995, U.N. Doc. CCPR/C/55/D/563/1993, at para. 8.2.

²³⁷ UNCAT, Summary Record of the 109th meeting, U.N. Doc. CAT/C/SR.109, paras. 22 and 27; UNCAT, Report of the Committee against Torture, 1992, U.N. Doc. A/47/44, para. 337; *Guridi v. Spain*, UNCAT, Decision of 24 May 2005, U.N. Doc. CAT/C/34/D/212/2002, at para. 6.8.

²³⁸ *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, at para. 90; *Assenov & Others v. Bulgaria*, ECtHR Judgment of 28 October 1998, at para 102.

suitable to address the legal right that has been infringed.²³⁹ Following this reasoning, the Inter-American Commission on Human Rights explained that torture and other similar grave crimes such as forced disappearance and summary execution are of such gravity that they require specific measures.²⁴⁰

191. In Kyrgyzstan, a civil claim can only succeed against state agents if there has been a conviction. As the Joint UPR Submission of a group of leading anti-torture NGOs in Kyrgyzstan noted, “Kyrgyz law does not allow victims of torture to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture [...] and] since the criminalization of torture in 2003, no victim of torture had received monetary compensation”²⁴¹ (see para. 84 above). Even if a claim for negligence might have been possible in light of the administrative penalties imposed by the internal check, this is in principle insufficient to fully represent or compensate Mr. Ernazarov’s family for his abuse and death. Furthermore, even this inadequate course was frustrated in practice by the authorities’ refusal to provide an official copy of the results of that investigation.
192. Furthermore, the deficiencies of the investigation as a whole, and the failure to investigate the allegations of torture at all, in practice deprive his family of the evidence which it would need to bring any civil claim, given that the events took place in state custody and the state therefore retains exclusive access to the evidence.
193. Mr. Ernazarov’s family has made strenuous efforts to have their claim for the ill-treatment and death of Mr. Ernazarov while in custody properly considered by the courts. Despite all those efforts there has been no real attempt to investigate the criminal liability of those who mistreated him and are responsible for this death, without which a proper civil claim is impossible and redress is denied.

IX. REMEDIES

194. The Author respectfully requests the Committee to:
 - a) make a finding that the Kyrgyz Republic has violated the right to life by failing to protect a vulnerable prisoner, and that Rakhmonberdi Ernazarov was arbitrarily killed; and that the State has also violated the prohibition against torture, the duty to investigate, and the obligation to provide an effective remedy.
 - b) urge the Kyrgyz Republic to create an independent commission of inquiry to investigate the circumstances of the death of Mr. Ernazarov, with the power to initiate a criminal prosecution of those found to be the material and intellectual authors of his death.
 - c) urge the Kyrgyz Republic to pay just compensation to the family for the unlawful death of Rakhmonberdi Ernazarov
 - d) urge the Kyrgyz Republic to introduce safeguards to prevent similar violations from happening in the future, including the creation of an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and

²³⁹ *Velasquez Rodriguez v Honduras*, IACtHR, Judgment of 29 July 1988, at para. 64.

²⁴⁰ *Catalán Lincoleo v. Chile*, IACommHR, Report No. 61/01 of 16 April 2001, at para. 36. Available at: <http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Chile11.771.htm>.

²⁴¹ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, U.N. Doc. A/HRC/WG.6/8/KGZ/3, at para. 28.

domestic legislation; to allow family visits of those in police detention; and to ensure proper monitoring of the detention facilities.

11 March 2011

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Open Society Justice Initiative

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Lawyer

LIST OF SUPPORTING DOCUMENTS

- Exhibit 1 Maps of the Kyrgyz Republic.
- Exhibit 2 Map of Osh Province, showing village of [REDACTED].
- Exhibit 3 Photograph of Mr. Ernazarov taken in the 1980s while Mr. Ernazarov was serving in the Soviet military.
- Exhibit 4 Statement of Saidkamal Akhmedov (Mr. Ernazarov's family's lawyer) (English and Russian).
- Exhibit 5 Statement of Mamatkarim Ernazarov (Mr. Ernazarov's brother) (English and Russian).
- Exhibit 6 Statement of Lolakhon Ernazarova (Mr. Ernazarov's sister) (English and Russian).
- Exhibit 7 Handwritten letter of Lolakhon Ernazarova (Mr. Ernazarov's sister) to investigators (English and Uzbek).
- Exhibit 8 Statement of Shakhribanu Anarbaeva (Mr. Ernazarov's sister), 31 January 2011 (English and Russian).
- Exhibit 9 Handwritten letter of Shakhribanu Anarbaeva (Mr. Ernazarov's sister) to investigators (English, Russian, and Uzbek).
- Exhibit 10 Report by Sub-Colonel Murzalimov dated 4 November 2005 (English and Russian).
- Exhibit 11 Report of Examination of Cell by Prosecutor Saidamatov (English and Russian).
- Exhibit 12 Copy and Police Analysis of Message on Cigarette Pack (English and Russian).
- Exhibit 13 First Complaint asking for an initiation of an investigation on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, 29 November 2005 (English and Russian).
- Exhibit 14 Reply dated 5 December 2005 signed by Prosecutor Saidamatov (English and Russian).
- Exhibit 15 Second Complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, 12 December 2005 (English and Russian).
- Exhibit 16 Second request by Mr. Akhmedov for information from the Ministry of Internal Affairs, 13 December 2005 (English and Russian).
- Exhibit 17 Response to the Lawyer dated 20 December 2005 (English and Russian).
- Exhibit 18 Third inquiry of Mr. Akhmedov to the Osh Public Prosecutor dated 7 January 2006 (English and Russian).
- Exhibit 19 Response to Mr. Akhmedov's application of 7 January 2006, dated 19 January 2006 (English and Russian).

- Exhibit 20 Fourth complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh and to Member of Parliament Beknazarov, 28 January 2006 (English and Russian).
- Exhibit 21 Letter Regarding the Transfer of Mamatkarim Ernazarov's (Mr. Ernazarov's brother's) statement dated 9 February 2006 (English and Russian).
- Exhibit 22 Reply from Deputy Prosecutor of Osh City dated 17 April 2006 (English and Russian).
- Exhibit 23 Letter from Dzh. Kazakow at Prosecutor General's Office to Mamatkarim Ernazarov (Mr. Ernazarov's brother) dated 10 July 2006 (English and Russian).
- Exhibit 24 Fifth complaint on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, copying numerous other parties, 11 February 2006 (English and Russian).
- Exhibit 25 Sixth complaint (same in substance to fifth complaint) on behalf of the family by lawyer Mr. Akhmedov to the Public Prosecutor of the City of Osh, copying numerous other parties, 21 March 2006 (English and Russian).
- Exhibit 26 Reply from Prosecutor General of the Kyrgyz Republic dated 23 March 2006 (English and Russian).
- Exhibit 27 Seventh complaint submitted this time to the Prosecutor General's Office, copying numerous other parties, on behalf of the family by lawyer Mr. Akhmedov objecting to the decision to suspend the investigation taken by the City of Osh, 2 June 2006 (English and Russian).
- Exhibit 28 Information sent to Member of Parliament Beknazarov by Deputy Prosecutor General of the Kyrgyz Republic Mr. Abdugaparov dated 23 August 2006 (English and Russian).
- Exhibit 29 Letter from Deputy Prosecutor of Osh City to Mr. Ernazarov's Brother dated 13 November 2006 (English and Russian).
- Exhibit 30 16 August 2006 Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) to the Osh Municipal Court (English and Russian).
- Exhibit 31 19 August 2006 New Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) to the Osh Municipal Court made because the Court failed to respond to the 16 August 2006 complaint (English and Russian).
- Exhibit 32 23 August 2006 Written Notification that a copy of the Written Complaint of August 16 of Mamatkarim Ernazarov (Mr. Ernazarov's brother) was forwarded to the Osh Public prosecutor (English and Russian).
- Exhibit 33 12 September 2006 Request to the Cassation Board of the Osh District Court to examine the Written Complaint of Mamatkarim Ernazarov (Mr. Ernazarov's brother) (English and Russian).
- Exhibit 34 Response from Osh Municipal Court dated 25 September 2006 to request for the consideration of the complaint of Mamatkarim Ernazarov (Mr.

- Ernazarov's brother) that was made to the Cassation Board of the Osh District Court on 12 September 2008 (English and Russian).
- Exhibit 35 Petition dated 20 October 2006 (English and Russian).
- Exhibit 36 Reply from Judge N. Bakirova dated 31 October 2006 (English and Russian).
- Exhibit 37 Petition to the Osh Municipal Court dated 21 November 2006 by Mamatkarim Ernazarov (Mr. Ernazarov's brother) asking for consideration of his complaints that were submitted to the same Court on 16 August 2006 and 19 August 2006 and to the Cassation board of the Court on 12 September 2006 (English and Russian).
- Exhibit 38 Decision dated 28 December 2006 of the Osh City Court (English and Russian).
- Exhibit 39 Appeal to the Osh City Court's Cassation Board dated 10 February 2007 asking for a revocation of the decision of the Osh City Court of 28 December 2006 and for a decision acknowledging the inaction of prosecutors and to make a determination that they failed to act in checking the submission of 2 June 2006 (English and Russian).
- Exhibit 40 Regional Court Decision dated 15 March 2007 on Mamatkarim Ernazarov (Mr. Ernazarov's brother) appeal of the 28 December 2006 decision of the Osh City Court rejecting his claims based on Article 132 of the Criminal Procedure Code (English and Russian).
- Exhibit 41 Appeal to Supreme Court dated 28 May 2007 (English and Russian).
- Exhibit 42 Supreme Court Decision dated 26 September 2007 revoking the decisions of the Osh City Court and the Osh Oblast Court Board of Cassation of 28 December 2006 and 15 March 2007 respectively (English and Russian).
- Exhibit 43 Diagram of Political Structure of the Kyrgyz Republic.
- Exhibit 44 Diagrams of Police Station.
- Exhibit 45 Results of Autopsy of Mr. Ernazarov dated 20 November 2005 (English and Russian).
- Exhibit 46 Ministry of Internal Affairs Internal Expert Conclusion on Handwriting on Cigarette Pack (English and Russian).
- Exhibit 47 Physicians for Human Rights, Report on the Death of Rakhmanberdi Ernazarov dated 6 July 2010.
- Exhibit 48 The Public Foundation for the Protection and Promotion of Youth "Oasis", *Report of the Monitoring of Human Rights in the Penitentiary Facilities of the Chuy Region of the Kyrgyz Republic: Respect of the Right for Protection from Discrimination of Sexual Minorities and Stigmatized Groups among Prisoners*, Bishkek, 2004 (English and Russian).