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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 985/2001

Submitted by:	Mrs. Kholinisso Aliboeva (not represented by counsel)
Alleged victim:	Mr. Valichon Aliboev (deceased husband of the author
State Party:	Tajikistan
Date of communication:	10 July 2001 (initial submission)
Document references:	Special Rapporteur's rule 92 decision, transmitted to the Sate party on 11 July 2001 (not issued in document form)
Date of adoption of Views:	18 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death penalty after an unfair trial and use of torture during preliminary investigation; absence of legal representation; scope of review of a Supreme court's decision rendered at first instance.

Procedural issues: -

Substantive issues: Right to life, right to a fair trial; prohibition of torture; right of convicted person to have the conviction and sentence reviewed by a higher tribunal according to law.

Articles of the Covenant: 6, 7, 14, paragraphs 1, 3 (d) and (g), and 5, of the Covenant

Article of the Optional Protocol: 2

On 18 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 985/2001. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

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

Eighty-fifth session

concerning

Communication No. 985/2001[**]

Submitted by:	Mrs. Kholinisso Aliboeva (not represented by counsel)
Alleged victim:	Mr. Valichon Aliboev (deceased husband of the author)
State Party:	Tajikistan
Date of communication:	10 July 2001 (initial submission)

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

Meeting on 18 October 2005,

Having concluded its consideration of communication No. 985/2001, submitted to the Human Rights Committee on behalf of Mr. Valichon Aliboev under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The author of the communication is Mrs. Kholinisso Aliboeva, an Uzbek national and Tajik resident, who submits the communication on behalf of her husband, Valichon Aliboev, also an Uzbek born in 1955, who, at the time of the submission of the communication was awaiting execution in Dushanbe, following a death sentence imposed by the Supreme Court of Tajikistan on 24 November 2000. The author claims that her husband is a victim of

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

violations by Tajikistan of his rights under articles 2, paragraph 3 (a); 6, paragraphs 1 and 2; 7; and 14, paragraphs 1, 3 (g) and (f), and 5, of the International Covenant on Civil and Political Rights. While the author does not invoke this provision specifically, the communication appears also to raise issues under article 14, paragraph 3 (d) in relation to her husband, and under article 7 in as much as she is herself concerned (notification of her husband's execution). The author is not represented by counsel[1].

1.2 On 11 July 2001, in accordance with rule 92 (old rule 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on Interim Measures and New Communications, requested the State party not to carry out the death sentence against Mr. Aliboev while his case was pending before the Committee. No reply was received from the State party. By letter of 30 October 2001, the author informed the Committee that in September 2001 she received a Certificate of Death, pursuant to which her husband had been executed on 7 July 2001 (i.e. prior to the receipt of the communication by the Committee[2]).

Factual background

2.1 Mr. Aliboev arrived in Tajikistan in 1999, to look for work "because of the poor living conditions" in the Ferghana Valley (Uzbekistan). In Dushanbe, he became acquainted with one Mulloakhed, who invited him to join his criminal gang, to which he agreed. According to the author, her husband was not present at the moment of the formation of the gang and he was not aware of its previous criminal activities.

2.2 In March 2000, Mr. Aliboev, together with other members of the gang took a 15 years old boy (U.) hostage and demanded ransom from his father. During the hostage-taking, Aliboev allegedly only stood guard at the entrance, and, afterwards U. was brought to his apartment. Aliboev allegedly looked after the hostage and gave him food and water.

2.3 Allegedly, the father refused to pay the ransom. Allegedly, a member of the gang ordered as Aliboev to administer an anaesthetic injection to the hostage, after which one of his fingers was cut off. A photograph and the finger were sent to the hostage's father, who then paid the ransom.

2.4 On 11 May 2000, officers of the Department for Fight Against Organized Crime of the Ministry of Interior arrested Mr. Aliboev. According to the author, he was kept "incommunicado" until 18 May 2000, when his sister Salima was allowed to visit him. Allegedly, she found him in a poor physical condition – he was bruised, his face was swollen from beatings, and his body bore marks of torture. Allegedly, since his arrest, Aliboev had been beaten constantly and subjected to torture to make him confess guilt and his internal organs were seriously injured. Some 20 days after his arrest (no specific date is indicated), he was transferred to an Investigation Detention Centre (SIZO), suffering pain in his kidneys and stomach. The author adds that her husband's lawyer was only appointed after his indictment (the exact date is not provided).

2.5 On 24 November 2000, the Supreme Court of Tajikistan found the gang guilty of 15 criminal acts (11 armed robberies, one murder and one attempted murder, and 3 hostage

[1] The Covenant and the Optional Protocol entered into force for the State party on 4 April 1999.
[2] The communication was received on 11 July 2001.

takings). The author points out that notwithstanding that her husband had participated in only one of the crimes attributed to the gang he received the maximum sentence, while "active" gang members who had participated in several crimes received equal punishment or were sentenced to a prison term.

2.6 The author claims that the sentence of the Supreme Court of 24 November 2000 became executory immediately, and Tajik law does not allow for an appeal from such convictions. The author's husband did request the Prosecutor General and the Chairman of the Supreme Court to introduce a protest following the supervisory procedure, but his claims were rejected.

2.7 The author contends that neither during the investigation nor in court was her husband offered the services of an interpreter, although he was an Uzbek, had received his school education in Russian, and only had basic knowledge of Tajik. He was thus unable to understand the essence of the charges brought against him nor the witnesses' and victims' depositions. She contends that Aliboev did not request an interpreter during the investigation, because of the partiality of the investigator and the torture he had been subjected to, while in court he was not even asked whether he needed the services of an interpreter.

2.8 In her letter to the Committee of 30 October 2001, the author explains that in August 2001 her husband's lawyer was informed by the Supreme Court of Tajikistan that Mr. Aliboev had been executed. In September 2001 (exact date not provided), the author received an official notification and a Certificate of Death, according to which her husband was executed by firing squad on 7 July 2001. She claims that although the State institutions were aware of the execution, no one informed her when she applied to them on her husband's behalf between July and September 2001 but that everywhere she received "assurances for assistance". She invites the Committee to continue the examination of her husband's case.

The complaint:

3.1 The author claims that her husband's sentence was unfair and disproportionate in relation to the acts he was convicted of, in violation of article 14, paragraph 1, of the Covenant.

3.2 She also claims that her husband was the victim of violations of his rights under articles 7 and 14, paragraph 3 (g), of the Covenant, because he was beaten and tortured after his arrest to make him confess guilt, and the confession was used against him in court.

3.3 Article 14, paragraph 3 (f), of the Covenant is said to have been violated, as the author's husband had not been offered the services of an interpreter.

3.4 Mr. Aliboev's right to have his conviction reviewed by a higher tribunal is said to have been violated, contrary to the requirements of article 14, paragraph 5, of the Covenant.

3.5 While she does not invoke the provision specifically, the author's claim that her husband had been offered the services of a lawyer only upon presentation of the charges against him may raise issues under article 14, paragraph 3 (d), of the Covenant.

3.6 The author claims that her husband was arbitrarily deprived of life following an unfair trial, in violation of articles 6 and 14 of the Covenant.

3.7 Finally and notwithstanding the fact that the author does not raise the issue specifically, the communication also appears to raise issues under article 7, in her own respect, because of the failure of the authorities to inform the author in advance of the date of her husband's execution, or subsequently, of the location of his burial site.

Absence of State party cooperation

4. By Notes Verbales of 11 July 2001, 5 November 2001, 19 December 2002, and 10 November 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal[3]. In the absence of any observations from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement.

5.3 With regard to the author's claim under article 14, paragraph 3(g), concerning the lack of interpretation during the investigation and in court, the Committee has noted that she had not indicated what steps, if any, her husband had taken to submit this allegation to the competent authorities and in court, and what the eventual outcome was. The Committee finds that in respect of this particular claim, domestic remedies have not been exhausted. Accordingly, the Committee finds that this part of the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

5.4 The Committee has also noted the author's claim that her husband's sentence was unfair and disproportionate, in violation of article 14, paragraph 1, of the Covenant. Although the State party has presented no observations, the Committee notes that this claim relates to an evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice[4]. The material before the Committee does not reveal that the evaluation of evidence or the conduct of the trial suffered from such defects. In the circumstances, it considers that the

[3] See, inter alia, *Khomidova v. Tajikistan*, Communication No. 1117/2002, Views adopted on 29 July 2004, and *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005.

[4] See Communication No 541/1993, Errol Simms v. Jamaica, Inadmissbility decision adopted on 3 April 1995, paragraph 6.2.

author has failed to sufficiently substantiate her claim in this relation. Accordingly, this part of the communication is inadmissible under article 2, of the Optional Protocol.

5.4 The Committee considers the remainder of the author's claims sufficiently substantiated, for purposes of admissibility, in that they appear to raise issues under articles 6, 7, and 14, paragraphs 3 (d) and (g), and 5, of the Covenant. It proceeds to their examination on the merits.

Examination of the merits

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

6.2 The Committee has taken note of the author's allegation that following his arrest on 11 May 2000, her husband was beaten and tortured by investigators. In substantiation, she affirms that Mr. Aliboev's sister had seen him on 18 May 2000, and he displayed signs of beatings and torture. In the absence of any State party information, due weight must be given to the author's duly substantiated claim. The Committee therefore considers that the facts before it justify the conclusion that Mr. Aliboev was subjected to treatment in violation of article 7 of the Covenant.

6.3 As the above mentioned acts were inflicted on Mr. Aliboev by the investigators, with a view to making him confess guilt in several crimes, the Committee considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

6.4 The Committee notes the author's claim that her husband was not represented by a lawyer until after his indictment, i.e. during a period when he was subjected to beatings and torture, and that the State party has not refuted this allegation. The Committee recalls its jurisprudence that, particularly in capital cases, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings[5]. In the present case, the author's husband faced capital charges, and was without any legal defence during the preliminary investigation. It remains unclear from the material before the Committee whether the author or her husband requested legal assistance, or sought to engage a private lawyer. The State party, however, has not presented any explanation on this issue. Accordingly, the Committee is of the view that the facts before it reveal a violation of Mr. Aliboev's right under article 14, paragraphs 3 (d), of the Covenant.

6.5 The author further claimed that her husband's right to have his death sentence reviewed by a higher tribunal according to law was violated. From the documents available to the Committee, it transpires that on 24 November 2000, Mr. Aliboev was sentenced to death at first instance by the Supreme Court. The judgment mentions that it is final and not subject to any further appeal. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of

[5] See for example, *Aliev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

the case[6]. In the absence of any explanation from the State party, the Committee considers that the absence of a possibility to appeal judgments of the Supreme Court passed at first instance to a higher judicial instance falls short of the requirements of article 14, paragraph 5. Consequently, there has been a violation of this provision[7].

6.6 With regard to the author's remaining claim under article 6 of the Covenant, the Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the current case, the sentence of death on the author's husband was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6, paragraph 2, thereof.

6.7 The Committee has taken note of the author's claim that the authorities did not inform her about her husband's execution but continued to acknowledge her intercessions on his behalf following the execution. The Committee notes that the law then in force did not allow for a family of an individual under sentence of death to be informed either of the date of execution or the location of the burial site of the executed prisoner. The Committee understands the continued anguish and mental stress caused to the author, as the wife of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her husband and the failure to inform her of his burial place, amounts to inhuman treatment of the author, in violation of article 7 of the Covenant[8].

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of Mr. Aliboev's rights under articles 6, paragraph 2; 7; and 14, paragraphs 1, 3 (d) and (g) and 5 of the Covenant, as well as under article 7 in relation to Ms. Aliboeva herself.

8. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an appropriate remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

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[6] See *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005, *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, Views adopted on 6 April 1998, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

[7] See for example, *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, Views adopted on 30 March 2005, *Aliev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

[8] See, for example, *Khalilova v. Tajikistan*, Communication No 973/2001, Views adopted on 30 March 2005, and *Lyashkevich v. Belarus*, Communication No 887/1999, Views adopted on 3 April 2003.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to these Views. The State party is also requested to publish the Committee's Views.

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