



**Convention against Torture
and Other Cruel, Inhuman or
Degrading Treatment
or Punishment**

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Committee against Torture

Communication No. 444/2010

**Decision adopted by the Committee at its forty-eighth session,
7 May-1 June 2012**

<i>Submitted by:</i>	Toirjon Abdussamatov and 28 other complainants (represented by counsel, Christine Laroque, ACAT-France)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Kazakhstan
<i>Date of complaint:</i>	24 December 2010 (initial submission)
<i>Date of present decision:</i>	1 June 2012
<i>Subject matter:</i>	Extradition of the complainants to Uzbekistan
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Procedural issue:</i>	N/A
<i>Article of the Convention:</i>	3

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-eighth session)

concerning

Communication No. 444/2010

Submitted by: Toirjon Abdussamatov and 28 other complainants (represented by counsel, Christine Laroque, ACAT-France)

Alleged victims: The complainants

State party: Kazakhstan

Date of complaint: 24 December 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 June 2012,

Having concluded its consideration of complaint No. 444/2010, submitted to the Committee against Torture by Christine Laroque on behalf of Toirjon Abdussamatov and 28 other complainants under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are 27 Uzbek and 2 Tajik nationals¹: Torjon Abdussamatov; Faizullohon Akbarov; Shodiev Akmaljon; Suhrob Bazarov; Ahmad Boltaev; Shuhrat Botirov; Mukhitdin Gulamov; Shukhrat Holboev; Saidakbar Jalolhonov; Abror Kasimov; Olimjon Kholturaev; Sarvar Khurramov; Oybek Kuldashev; Kobiljon Kurbanov; Bahriddin Nurillaev; Bahtiyor Nurillaev; Ulugbek Ostonov; Otabek Sharipov; Tursunboy Sulaimonov; Abduazimhuja Yakubov; Uktam Rakhmatov; Alisher Khoshimov; Oybek Pulatov; Maruf Yuldoshev; Isobek Pardaev; Ravshan Turaev; Dilbek Karimov; Sirojiddin Talipov and Fayziddin Umarov. The complainants claim that their extradition to Uzbekistan would constitute a violation by Kazakhstan of article 3 of the Convention against Torture. They are represented by counsel, Christine Laroque, Action by Christians for the Abolition of Torture (ACAT France).

¹ While in Kazakhstan, all complainants gave power of attorney to counsel.

1.2 Under rule 114 (former rule 108) of its rules of procedure, the Special Rapporteur on new complaints and interim measures acting on behalf of the Committee requested the State party, on 24 and 31 December 2010 and 21 January 2011, not to extradite the complainants to Uzbekistan while their communication was under consideration by the Committee. On 6 May 2011 and 9 June 2011, the request for interim measures was reiterated. Nevertheless, the complainants were extradited to Uzbekistan on 29 June 2011.

1.3 On 15 November 2011, at its 47th session, the Committee decided that, by breaching the Committee's request under rule 114 of its rules of procedure, the State party had failed in its obligations to cooperate in good faith under article 22, of the Convention; and that the communication was admissible insofar as it raised issues with respect to article 3 of the Convention. The Committee accepted the State party's request for an oral hearing, and, accordingly decided to invite State party representatives together with the complainants' counsel to an oral hearing on the merits of the communication, to take place at the Committee's forty-eighth session, in May 2012.

1.4 On 1 June 2012, the Committee decided to make public its admissibility decision of 15 November 2011. The present decision reproduces only a summary of the facts as presented by the complainants, the complaint and the parties' submissions on the merits. For the parties' submissions on admissibility and the Committee's decision see Abdussamatov et. al v. Kazakhstan, communication No. 444/2010, decision of admissibility adopted on 15 November 2011.

Summary of the facts as presented by the complainants

2.1 The complainants are practitioners of Islam and fled Uzbekistan for fear of persecution for practising their religion. Twelve (12) complainants were recognized as mandate refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) between 2005 and March 2010. In January 2010, a new Law on Refugees came into force in Kazakhstan, requiring all asylum-seekers, as well as mandate refugees recognized by UNHCR, to register with the Government of Kazakhstan and no longer with UNHCR. The complainants duly registered with the migration police in May 2010.

2.2 Between 9 and 11 June 2010, the complainants were arrested by the Kazakh migration police and by plainclothes agents believed to be from the Committee for National Security (KNB). No arrest warrant was shown at the time of the arrest; some of the complainants, however, saw it later. In May 2010, the Central Committee for Determination of Refugee Status (CDRS) conducted interviews with the complainants without the assistance of a lawyer or a translator. On 11 and 27 August 2010, CDRS rejected their asylum applications, regardless of the previous status of UNHCR mandate refugee of 12 complainants. The decisions merely stated that the cases did not satisfy the criteria for refugee status, without providing any other explanations.

2.3 On 8 September 2010, the Office of the Prosecutor in Almaty announced that, further to a request from the Uzbek authorities and in accordance with the bilateral agreement of 22 January 1993 (the Commonwealth of Independent States (C.I.S.) Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (the Minsk Convention)) and the 2001 Shanghai Convention, the complainants would be extradited to Uzbekistan, as they were involved in "illegal organizations" and accused of "attempts to overthrow the constitutional order" in Uzbekistan. However, neither the order of extradition nor any other written notification was given to them.

2.4 On 6 December 2010, court No. 2 of the Almalinsk district of Almaty decided to deal jointly with the complainants' appeals against the CDRS decisions.

Summary of the complaint

3.1 The complainants refer to the concluding observations by the Human Rights Committee for Uzbekistan, in which it expressed concerns about the limitations and restrictions on freedom of religion and belief and about the use of criminal law to penalize the apparently peaceful exercise of religious freedom, including for members of non-registered religious groups and the persistent reports of charges and imprisonment of such individuals², as well as to a report by Human Rights Watch stating that Uzbek authorities have targeted and imprisoned Muslims and other religious believers who practise their faith outside official institutions or who belong to unregistered religious organizations.³

3.2 The complainants further submit that Uzbekistan's record on torture and ill-treatment has been well documented and that in 2010 the Human Rights Committee noted with concern the continued reported occurrence of torture and ill-treatment.⁴ ACAT-France, counsel for the complainants, has been closely following up dozens of cases of torture victims and notes that torture practice remains systematic in Uzbekistan and that Muslims practising their faith outside official State controls are significantly targeted for acts of torture and other forms of mistreatment in custody.

Summary of the State party's observations on the merits

4.1 On 24 June 2011, the State party submits its observations on the merits and informs the Committee on the extradition of 19 complainants. It recalls that from 9 June to 14 December 2010, 19 foreigners for whom arrest warrants for serious crimes had been issued in Uzbekistan were arrested. Four of them were asylum-seekers and 15 had been granted refugee status by UNHCR. As of 1 January 2010, matters concerning asylum-seekers and refugees were regulated by the new Refugee Act and therefore refugee statuses formerly issued by UNHCR were withdrawn. A special commission under the Ministry of Labour and Social Affairs (Ministry of Interior as of 30 September 2010) reviewed the 19 complainants' refugee status. An expert from UNHCR in Geneva participated in the examination and had access to all meetings and documentation. The commission also reviewed material provided by Uzbekistan. The commission rejected the asylum claims and withdrew the refugee status of all 19 complainants. From 10 to 29 December 2010, court No. 2 of the Almalinsk district of Almaty reviewed the complainants' claims and endorsed the commission's decision rejecting refugee status. In a hearing from 2 February to 29 March 2011, the Almaty City court rejected the complainants' appeal. The cassation appeals of 28 complainants⁵ were rejected and the commission's decision became final. The complainants also instituted proceedings under article 531-1 of the Criminal Procedure Code against the decision by the General Prosecutor to extradite them to Uzbekistan. On 15 March 2011, court No. 2 of Almalinsk district rejected their complaint. The Almaty city court also rejected their appeal and the decision of the General Prosecutor to extradite them became final.

4.2 The State party submits that during the judicial proceedings, monitoring was carried out by a representative of UNHCR and of the State party's Human Rights Office. There were no complaints about the proceedings before the commission. The proceedings were

² CCPR/CO/83/UZB, para. 22 and CCPR/C/UZB/CO/3, para. 19.

³ Human Rights Watch report, *Creating Enemies of the State: Religious Persecution in Uzbekistan* (2004), available from: <http://www.hrw.org/en/reports/2004/03/29/creating-enemies-state-0>.

⁴ CCPR/C/UZB/CO/3, para. 11.

⁵ It is not clear from the State party's observations if they address only 19 complainants (which ones is not clear) or if they address 28 complainants; in this case it is not clear what happened to the remaining complainant.

transparent and impartial and followed international standards, including the 1951 Convention relating to the Status of Refugees. The complainants' requests for refugee status were examined pursuant to the law on refugees and the complainants appealed the negative decision to all instances. Legal representation of the complainants was guaranteed before all instances. The decision of the commission on migration was based on the fact that the complainants would pose a threat to the State party and could cause significant damage to the security of other countries. The complainants did not receive refugee status pursuant to Article 1 F (c) of the 1951 Convention relating to the Status of Refugees. The State party further submits that Uzbekistan is a party to the International Covenant on Civil and Political Rights and the Convention against Torture; therefore the criminal investigation against the complainants will be made according to Uzbek national law and to the country's international obligations.

4.3 The complainants were extradited pursuant to the Minsk Convention. The Uzbek authorities guaranteed to respect their rights and freedoms, and that no torture or cruel, inhuman or degrading treatment would harm them. The State party therefore submits that the present communication is without merits.

Summary of the complainants' comments on the State party's observations on the merits

5.1 On 5 August 2011 counsel notes, first, that the State party refers to only 19 complainants out of 29. Further she reiterates her view that the remedies provided to the complainants in the context of their asylum applications were not effective.⁶ Counsel notes that according to the State party, the asylum requests of the complainants were rejected on the basis of section 12 of the Refugee Act, pursuant to which refugee status is not granted if there are serious doubts as to whether the asylum-seekers were or are members of forbidden religious organizations. This provision of the law was criticized as being contrary to international refugee law.⁷

5.2 Counsel notes that after their removal to Uzbekistan, the complainants were detained incommunicado. The complainants were extradited on 9 June 2011, disregarding the Committee's request for interim measures of protection, with the knowledge that the complainants would be in danger of being subjected to torture upon return, and depending on "unreliable diplomatic assurance" reportedly provided by Uzbekistan. The State party

⁶ In this context, counsel refers to paragraph 19 of the concluding observations of the Human Rights Committee concerning the examination of the initial report of Kazakhstan in July 2011 (CCPR/C/KAZ/CO/1), noting with concern that despite the enactment of new refugee legislation in 2010, its application does not guarantee the rights protected under the Covenant, and that individuals, in particular Uzbek nationals [...], have no protection under the principle of non-refoulement. Counsel also refers to a submission prepared by several Kazakh NGOs in June 2011, expressing similar concerns and referring expressly to the situation of the complainants in the present case (Kazakh NGOs joint report to the Human Rights Committee, available from http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Almaty_report_HRC102.pdf).

⁷ Counsel refers to a report prepared by FIDH in October 2009: "Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees". Finally, counsel explains that Kazakh NGOs criticize the role of UNHCR as participating in the determination of asylum status in the State party (Kazakhstan Coalition of Nongovernmental Organizations (NGOs) against Torture, 2010 Report, p. 11, <http://www.bureau.kz/news/download/175.pdf>), and notes that the Human Rights Committee expressed similar concerns in its concluding observations on Kazakhstan in July 2011.

has officially acknowledged the removal of 28 individuals; counsel requests clarifications about the whereabouts and the status of the one remaining individual.

5.3 Counsel notes that the complainants' extradition took place on the basis of the Minsk Convention, which, however, does not refer to the non-refoulement obligation arising from the State party's adherence to the Convention against Torture, and its provisions cannot release the State party from its obligations not to return an individual if a risk of torture exists in the receiving State.

5.4 Counsel further contends that the State party was aware of the existence of a risk for the complainants of being subjected to torture in Uzbekistan. She points out that several public reports on the widespread use of torture in Uzbekistan were released by United Nations institutions, and international and national non-governmental organizations (NGOs).⁸ In their asylum applications, the complainants had provided details of their personal risk of torture in Uzbekistan; a number of them also referred to torture previously suffered there. All of the complainants are charged with serious crimes in Uzbekistan, such as belonging to a prohibited religious movement, and as such, all of them belong to a group systematically exposed to ill-treatment. In addition, many of the complainants had been previously granted refugee status in Kazakhstan, by UNHCR, prior to the entry into force of the new refugee law.

5.5 Finally, on the issue of diplomatic assurances, counsel explains that the Human Rights Committee, in its concluding observations concerning Kazakhstan in July 2011, has specifically warned the State party to exercise utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where they are likely to be subjected to torture or serious human rights violations. In the present case, no appropriate follow-up mechanism exists for the monitoring of the situation of the complainants in Uzbekistan, and there is no access to the complainants there.

Summary of additional information by the State party

6.1 On 23 September 2011, the State party reiterates that all proceedings concerning the asylum applications of the complainants before the Migration Commission were lawful and that the authorities' decision not to grant asylum to the complainants was well founded and lawful. The Migration Commission was provided with all extradition materials received from the Uzbek authorities.

6.2 All refusals to grant asylum to the complainants, as well as the decisions to extradite them to Uzbekistan were examined and confirmed by a court, including on appeal. All proceedings were transparent and held in an impartial manner. All complainants were offered the services of lawyers, at all stages of the trial, including representing their interests on appeal.

6.3 The State party emphasizes that the decisions of the Migration Commission were based on the existence of reliable and verified information to the effect that the complainants' presence in Kazakhstan constitutes a threat for the State party and could also cause irreparable harm to the security of other countries. Article 1 F (c) of the 1951 Convention relating to the Status of Refugees provides that the provisions of the

⁸ Reference is made to the concluding observations on Uzbekistan by the Committee against Torture (CAT/C/UZB/CO/3), those of the Human Rights Committee (CCPR/CO/83/UZB), and a report by the Special Rapporteur on the question of torture (A/HRC/13/39/Add.6), as well as public reports concerning Uzbekistan prepared by ACAT France, Amnesty International, and Human Rights Watch, and Uzbek NGOs.

Convention shall not apply to any person with respect to whom there are serious reasons for considering that "he has been guilty of acts contrary to the purposes and principles of the United Nations". Pursuant to article 12 of the Refugee Act, refugee status cannot be granted where there are serious grounds to believe that the interested individuals participate or had participated in the activities of forbidden religious organizations. On this ground, having studied the materials on file, UNHCR has decided to annul the refugee certificates previously issued to a number of the complainants.

6.4 As to the complainants' situation in Uzbekistan, the State party reiterates that Uzbekistan is a party to the basic international human rights instruments and that criminal prosecutions there are conducted in accordance with national law and in light of the international obligations of Uzbekistan. Uzbekistan provided guarantees regarding respect for the basic rights and freedoms of the complainants, and that the latter would not be subjected to torture or other forms of cruel, inhuman or degrading treatment.

The complainants' further submission on the merits

7.1 On 29 February 2012, counsel submits further information with regard to the complainants' reasons for seeking protection in Kazakhstan. Counsel points out that she was not able to contact the complainants in detention in Kazakhstan or in Uzbekistan upon their extradition; therefore the information is based on the complainants' asylum application, the appeals and legal motions lodged by their lawyers in their judicial proceedings before the State party's courts in 2010 and 2011, and the Kazakh court rulings. All complainants signed a power of attorney for counsel in the framework of the present communication.

Toirjon Abdussamatov

7.2 In May 1999, the complainant joined the Islamic Movement of Uzbekistan in Tajikistan. After one month, he escaped from the camp and surrendered to the police in Uzbekistan. In April 2000, he was convicted to 20 years' imprisonment. In February 2005, he was amnestied, however the police threatened him with re-arrest if he did not agree to spy on several Muslims at the mosque. In November 2005, his brother was arrested in Kazakhstan and forcibly returned despite his asylum application, and thereafter the family's house was under surveillance. In December 2005, the complainant arrived in Almaty and in July 2007 he was granted UNHCR refugee status. After the complainant's departure, his brother-in-law was arrested and beaten in police custody and the Uzbek authorities sent his mother and brother to look for him and pressured them to bring the complainant back.

Faizullohon Akbarov

7.3 On 18 June 2009, the complainant was arrested by officers from the National Security Service (SNB). In custody, he was severely beaten and put under psychological pressure, and threatened with being charged with terrorism. After a local NGO contacted the Ministry of Internal Affairs, he was transferred to a centre for homeless persons and then released on 22 June 2009. On 24 June 2009, he fled Uzbekistan and applied for asylum in Kazakhstan, where he was granted UNHCR refugee status.

Shodiev Akmaljon

7.4 The complainant, a Tajik national, had worked in Uzbekistan from 2000 to 2003. In 2007, when working in Russia, the complainant received a call from his brother informing him that an arrest warrant had been issued against him in Uzbekistan for membership of an extremist and religious organization. He applied for asylum in Russia, which was rejected. On 9 July 2009, after his return to Tajikistan, he was arrested and the security services

threatened to extradite him to Uzbekistan. Through his network and by means of a bribe, the complainant's father-in-law obtained his release, after which he fled to Kazakhstan.

Suhrob Bazarov

7.5 The complainant regularly attended prayers at the mosque. SNB agents questioned him several times and threatened him with arrest. His house was regularly searched by armed officers. In 2009, a friend of his invited him to a party where he met someone called Umar. In August 2009, his friend was arrested due to his relationship with Umar. The complainant was also questioned by the police. Fearing arrest, he left Uzbekistan and obtained UNHCR refugee status on 26 November 2009.

Ahmad Boltaev

7.6 On 2 April 2000, the complainant was arrested, during a massive wave of arrests of Muslims after the 1999 bomb blasts in Tashkent. He was beaten with truncheons in police custody and police officers planted heroin in his clothes and fabricated a case against him. He was beaten and tortured for 26 days until he agreed to sign a false confession, after which he was transferred to the Tashkent pretrial detention centre, where he was tortured again. On 15 May 2000, he was sentenced to 20 years' imprisonment for terrorism, incitement to racial, religious or ethnic hatred, attempts to overthrow the constitutional order and possession of drugs. In prison, he was coerced into running while naked and doing gruelling physical exercises; he was also regularly beaten and interrogated by SNB agents. On 27 December 2003, due to the critical state of his health, he was released from prison and requested to report to the local Ministry of Interior Department on a bi-weekly basis, when he was regularly beaten. On 13 September 2006, he was informed that several family members had been arrested. The complainant went into hiding, until he left for Kyrgyzstan in November 2007. On 17 March 2009, he went to Almaty and was granted UNHCR refugee status in August 2009.

Shuhrat Botirov

7.7 The complainant regularly attended Friday prayers at the mosque and was several times threatened with arrest by the local community authorities. In April 2010, two of his friends with whom he used to attend Friday prayers were arrested by the SNB. They were convicted to 9 and 20 years' imprisonment. The complainant was afraid for his life and decided to leave Uzbekistan. On 5 April 2010, he arrived in Kazakhstan, where he was granted UNHCR refugee status.

Mukhitdin Gulamov

7.8 In 1999, three of his friends with whom he used to attend the mosque were arrested and his house was searched. In 2001, in a new wave of arrests targeting the mosque he was attending, police searched his house in his absence. After this, the complainant went into hiding until 2004. When he came out of hiding, he was summoned by the Prosecutor's office and questioned about his acquaintances. From 2005 to 2007, he was in hiding again, after several friends were convicted. In early 2007, he left Uzbekistan and obtained UNHCR refugee status in Kazakhstan in March 2007.

Shukhrat Holboev

7.9 In November 1999, friends of the complainant were arrested and forced to sign documents alleging that the complainant was advocating overthrowing the constitutional regime. In December 1999, the complainant was arrested and forced to sign a confession. In February 2000, he was sentenced to six and a half years' imprisonment for attempts to overthrow the constitutional order and illegal possession of weapons, ammunition and

explosives. On 14 January 2004, he was amnestied. In August 2009, several of his friends were arrested. On 9 October 2009, he fled to Kyrgyzstan and on 11 January 2010, he arrived in Almaty and applied for asylum under the 2010 Kazakh Refugee Act.

Saidakbar Jalolhonov

7.10 In 1995, several religious leaders were arrested and the mosque the complainant used to attend was forcibly closed. He therefore decided to go to Russia. In Russia, he resumed his religious classes and became an Imam. He visited Uzbekistan once a year. In 2001, he was informed that his former teacher had been arrested and under torture revealed the names of all his students, including that of the complainant and that the SNB had come to his house several times to question his parents about him. The complainant immediately returned to Russia. In 2004, he was summoned by the Russian Federal Security Services, who informed him that he was on the Uzbek black list. Subsequently, he was denied renewal of his work permit and advised to leave Russia; otherwise he would be deported to Uzbekistan. He moved to Kyrgyzstan and then to Kazakhstan, where he was granted UNHCR refugee status on 26 August 2009.

Dilbek Karimov

7.11 The complainant worked at a factory in St. Petersburg. He started studying Islam. In 2009, his mother told him that his uncle and several friends had been arrested and accused of membership of an extremist religious group. She also told him that the SNB had come to his parents' apartment and that she, under pressure, had given them the complainant's address in St. Petersburg. The complainant was informed that the Uzbek authorities were looking for him for membership of a religious extremist organization. On 6 January 2010, he sought asylum in Kazakhstan. From 10 to 25 April 2010, his father was detained by the Uzbek SNB in an effort to pressure the complainant to return to Uzbekistan.

Abror Kasimov

7.12 In June 2007, the SNB arrested 55 people in Kokand, including one of the complainant's friends, who was forced to incriminate him in a case. On 10 July 2007, the complainant fled to Russia. In his absence, his house was searched and documents confiscated. His wife and parents were also regularly interrogated by the SNB. In April 2009, he arrived in Kazakhstan, where he sought asylum.

Olimjon Kholturaev

7.13 The complainant had been studying the Koran in Arabic since 2004. In 2008, his friend was arrested and revealed the name of the complainant. On 23 November 2008, the complainant went into hiding. After the conviction of another friend, who had returned to Uzbekistan from the United Kingdom, the complainant decided to seek asylum in Kazakhstan.

Alisher Khoshimov

7.14 On 27 January 1998, the complainant was arrested and, after drugs had been planted in his pocket, he was charged with drug possession. In pretrial detention, he was interrogated about an Imam whom he knew and he was tortured by alleged inmates in his cell, who incited him to testify against the Imam for attempts to overthrow the constitutional regime. On 26 January 2001, he was released. In June 2009, one of his relatives was interrogated about him and was later convicted to six years' imprisonment. In September 2009, the complainant fled to Kazakhstan. In his absence, the police came to his house and asked about his whereabouts. His 17-year-old son, his brother and his nephew were arrested and his son was convicted to 15 years' imprisonment.

Sarvar Khurramov

7.15 The complainant belongs to a Muslim family and for his wedding, he organized a religious service. After the arrest of a friend (the same as Mr. Kholturaev's friend, see above), SNB agents came to his parents' house for questioning. In February 2010, the complainant was granted UNHCR refugee status in Kazakhstan.

Oybek Kuldashev

7.16 The complainant regularly attended the local mosque. In April 2010, two of his friends were arrested and later convicted to 9 and 20 years' imprisonment. Afraid for his life, the complainant left Uzbekistan and was granted UNHCR refugee status on 8 April 2010. He was informed that his two brothers and a close friend had been arrested and interrogated about him during his absence. They were severely beaten.

Kobiljon Kurbanov

7.17 After the 1999 bombings in Tashkent, the complainant began to be harassed. In 2001, the complainant was convicted for distribution of illegal leaflets that the police planted in his bag. In 2004, he was arrested for illegal possession of a weapon that the police had hidden at his house. In 2009, he was illegally detained for seven days and severely beaten by the police. On 26 February 2010, he sought asylum in Kazakhstan.

Bahriddin and Bahtiyor Nurillaev

7.18 Several members of the complainants' family were arrested because of their religious practices. Their brother was tortured over a period of five months and forced to sign false confessions. Four of their cousins were also tortured and forced to sign confessions stating that they belonged to extremist organizations. Afraid of being subjected to the same treatment, the brothers fled to Kazakhstan, where they were granted UNHCR refugee status in October and November 2009.

Ulugbek Ostonov

7.19 In 1999, the complainant became a practising Muslim and hosted a discussion group about Islam at his house. In March 2004, after the bomb blasts in Tashkent, three members of the group were convicted to 16 and 18 years' imprisonment. The complainant was placed under surveillance and his wife was regularly questioned and tortured in connection with him by SNB agents. Fearing for his safety, the complainant went to Russia and then to Kazakhstan in October 2008. He was informed that his brother had been held incommunicado for three months, during which time he was tortured and told that he would be released if the complainant came back to Uzbekistan. On 13 January 2010, the complainant obtained UNHCR refugee status in Kazakhstan.

Isobek Pardaev

7.20 In 2006, the complainant started practising Islam and in 2009, he got married in a religious service, following which he was placed under surveillance as a potential extremist. In April 2010, two of his friends were arrested at the mosque he was attending. The complainant left for Kazakhstan, where he was granted refugee status in May 2010.

Oybek Pulatov

7.21 In 2009, friends of the complainant with whom he attended the mosque were arrested and the complainant's house and shop were placed under surveillance. In April 2010, a very close friend was arrested, held incommunicado for five months and severely tortured. Worried by these arrests, the complainant left for Kazakhstan.

Uktam Rakhmatov

7.22 The complainant was meeting his friends twice a month to study the Koran. In 2008, he was informed that his name appeared on the list of alleged suspects. In 2009, after several friends were arrested, he was approached by the SNB several times. After his departure for Kazakhstan on 5 April 2010, his parents were notified that the police were looking for him.

Otabek Sharipov

7.23 On 7 June 2000, the complainant was interrogated, kicked and punched and asked to confess that he belonged to an extremist religious group, which he refused to do. Over a period of 20 days he was severely tortured and asked to sign a confession, which he finally did. On 11 December 2000, he was convicted to nine years' imprisonment. On 15 January 2003, after having been regularly tortured in detention, he was released on an amnesty. In 2007, the complainant went to work in St. Petersburg and returned to Uzbekistan in December 2007. In February 2008, several of his colleagues were arrested after they returned to Uzbekistan. On 21 August 2009, he arrived in Kazakhstan.

Tursunboy Sulaimonov

7.24 The complainant is Muslim and a Tajik national. On 29 March 2004, the day of the Tashkent bombings, his three brothers-in-law were arrested. Four days later, 12 police officers came to his house. His wife managed to warn him and he fled to Tajikistan. A few days later, the Tajik authorities arrested him and accused him of taking part in the March bombings in Tashkent and of gun smuggling. He was tortured for three days but was released following a significant bribe. In September 2004, a trial started against 33 defendants, including the complainant. He was described as the leader of the extremist organization which carried out the Tashkent bombings and the Uzbek authorities issued an international arrest warrant for him. On 6 March 2009, the complainant arrived in Kazakhstan after living in hiding in Tajikistan and Kyrgyzstan.

Sirojiddin Talipov

7.25 The complainant regularly attended prayers. In 2007, the complainant went to Russia to work and, during one of his visits to Uzbekistan, he was informed that his house was under surveillance and that many of his friends had been arrested. In 2010, his family told him that he should not return to Uzbekistan as he would be arrested. He therefore went to Kazakhstan and sought asylum.

Abduazimhuja Yakubov

7.26 A colleague of the complainant was placed under SNB surveillance and was later assassinated. In 2009, the complainant and every man in his family were summoned by the SNB. On 28 January 2010, the complainant arrived in Kazakhstan. He was informed that his sister and nephew had been convicted to 9 and 17 years' imprisonment respectively and that he was charged with belonging to an extremist religious group allegedly founded by his father-in-law, who was later killed by the police.

Maruf Yuldoshev

7.27 In 2009, the complainant started attending the mosque. In April 2010, one of his friends was arrested and he was advised by another friend that he was in danger of arrest and torture. He fled Uzbekistan and arrived in Kazakhstan on 5 April 2010.

7.28 Counsel submits that she does not have any information on Ravshan Turaev and Fayziddin Umarov, as she was not able to access the complainants in detention in Kazakhstan or Uzbekistan upon their extradition

State party's further observations on the merits

8.1 On 30 April 2012, the State party submits further observations with regard to the extradition of the 29 complainants. It notes that from June to December 2010, the complainants were extradited to Uzbekistan, where they were wanted on charges of terrorism, establishment and membership of religious, extremist, separatist, fundamentalist and other prohibited organizations, murder, membership of criminal organizations and other crimes. The decision to extradite them was taken in accordance with the provisions of the International Covenant on Civil and Political Rights, and also taking into account the gravity of the charges, to avoid the individuals escaping and to ensure public security on the territory of the State party.

8.2 The State party refers to its earlier submissions with regard to the legality of the extradition decision and the complainants' allegations of ill-treatment and torture by the State party's authorities. It reiterates that it had received written guarantees from the General Prosecutor's Office of Uzbekistan that the complainants' rights and freedoms would be respected after the extradition and that they would not be subjected to torture or ill-treatment. The Uzbek authorities also assured the Committee that international organizations, such as the International Committee of the Red Cross (ICRC), the World Health Organization (WHO) and a number of international human rights organizations have free access to monitor detention facilities and to carry out interviews with detainees.

8.3 The State party explains that after the authorities' decisions on the complainants' claims against their extradition and concerning their refugee status had become final, it did not have any legal grounds to keep them in detention, and that, moreover, it could not release them as they constituted a threat to Kazakh public interests and security.

8.4 The State party recalls that Uzbekistan is a party both to the International Covenant on Civil and Political Rights and the Convention against Torture. Therefore, the criminal proceedings against the complainants are carried out in line with the domestic legislation and the international obligations of Uzbekistan. Pursuant to the Minsk Convention, the State party obtained information on the criminal investigations against 26 complainants, who have been sentenced only for crimes which figured in the extradition request. None of them was sentenced to death or to life imprisonment.

8.5 The State party notes that Mr. Rakhmatov was sentenced to three years' corrective labour. Similar sentences which do not involve imprisonment were given to Mr. Pulatov and Mr. Yuldoshev. The criminal case against Mr. Jalolhonov was closed pursuant to an amnesty act. Mr. Abdussamatov was sentenced to 12 years' imprisonment on 26 September 2011 for attempts to overthrow the constitutional order. The State party explains that it will be informed by Uzbekistan of the outcome of all criminal proceedings against the complainants. Finally, the State party submits that its embassy personnel met with the Uzbek authorities regarding the complainants' conditions of detention and their claims of torture and ill-treatment and that it will provide further clarifications in this regard.

Oral hearing of the parties

9.1 On 8 May 2012, at the request of the State party, the Committee held an oral hearing with both parties. The State party explained that the decision to extradite the complainants was taken for a number of reasons: firstly, according to article 534 of the Criminal Procedure Code, the maximum duration of imprisonment on extradition arrest is one year and the complainants had completed that year; secondly, there were no legal grounds for

their release or for granting them refugee status in Kazakhstan, and it appeared to be impossible to relocate them to a third country; thirdly, according to foreign partners' information, the complainants were involved in the establishment of a network of international terrorist organizations, of which two such organizations are prohibited in the State party and are on the list of the United Nations Security Council Counter-Terrorism Committee.

9.2 The State party further noted that UNHCR had revoked the complainants' refugee status after their experts had studied their files for two months. The State party could not allow further infiltration of religious extremism from Central Asia to other countries and made a conscious decision not to respect the Committee's request for interim measures in order to protect its citizens and those of other countries.

9.3 With regard to the complainants' criminal proceedings in Uzbekistan and their health, the State party explained that, according to the information from the Uzbek General Prosecutor of 5 May 2012, 25 complainants have been found guilty of crimes and sentenced; three of them were sentenced to corrective labour for three years and were released after the court hearing. One complainant was amnestied. The State party notes that there is no reason to believe that the complainants would be subjected to torture, inhuman or degrading treatment in Uzbekistan. According to the Uzbek authorities, the complainants are held in adequate conditions and they are not subjected to torture. The State party notes that every year, about 10,000 illegal migrants enter its territory from Uzbekistan, some 5,000 of whom are sent back. The State party cooperates with Uzbekistan and extradites an average of 40 individuals per year in relation to criminal proceedings. Since 2007, UNHCR has resettled 215 Uzbek citizens to third countries.

9.4 Answering the Committee members' questions, the State party noted that, according to article 18 of the Refugee Act and article 532 of the Criminal Procedure Code, nobody can be sent back to a third country if there is a threat to life or liberty and a risk of torture. On fair trial of the complainants in Kazakhstan, the State party reiterated its written observations and noted that documentary evidence proved that lawyers and interpreters took part in the proceedings and no complaints were submitted by the complainants, their lawyers, the representatives of UNHCR or the State party's Human Rights Office. With regard to the proceedings in Uzbekistan, the State party noted that all complainants were defended by lawyers of their choice and that no claims of torture have been made.

9.5 With regard to the situation in Uzbekistan and the risks for the complainants, the State party observed that the Kazakh authorities worked together with their Uzbek counterparts to receive assurances that none of the complainants would be subjected to torture and that international organizations would be allowed to visit them. In case of failure to observe these guarantees, the State party has reserved its right to review its cooperation with Uzbekistan. It also stated that it is aware of international non-governmental organizations' human rights reports on Uzbekistan, reports by United Nations Special Rapporteurs and General Assembly resolutions. It referred to other reports indicating that the human rights situations in Uzbekistan had improved. It also submitted that Mr. Yakubov was sentenced to 18 years of imprisonment and Mr. Boltaev to 12, rather than 30 as mentioned in the media.

9.6 With regard to the whether the complainants figure by name on the United Nations Security Council Counter-Terrorism Committee list, the State party noted that the two organizations it mentioned are on the list. One has around 5,000 members and not all of the members are listed.

9.7 The State party further explained that it regularly monitors the complainants' situation and that it has been informed that the complainants were not subjected to torture on return to Uzbekistan.

9.8 The State party confirmed that it had an anti-terrorism law but that it decided to extradite the complainants in light of the threat they represented to national security and security in the region or other countries.

9.9 With regard to the complainants' whereabouts, the State party stated that four of them have been released and the others are either in prison or in pretrial detention.

10.1 The complainants' counsel stated that the State party has not explained its failure to comply with the interim measures of protection constituting a violation of article 22 of the Convention⁹, thereby shifting the burden of proof to the State Party, which needs to justify the complainants' extradition.

10.2 Counsel notes that before the extradition of the complainants, the State party had ample information regarding the substantial risk of torture upon their return. The abysmal record of Uzbekistan on torture has been well documented by international NGOs, such as Human Rights Watch,¹⁰ by the United Nations Special Rapporteur on torture, the Human Rights Committee in its concluding observations on Uzbekistan in 2010 and in European Court of Human Rights judgments against Russia.¹¹ It is well known that there is a consistent and systematic use of torture against detainees in Uzbekistan and that individuals held on religious or terrorism grounds face higher risks. Counsel reiterates that the complainants are all devout followers of Islam and were charged on the basis of article 244 of the Uzbek Criminal Code ("publishing, storing and distributing of materials containing ideas of religious extremism" and "participating in a religious extremist, separatist, fundamentalist or other banned organization") and article 159 of the Uzbek Criminal Code ("attempt to overthrow the constitutional order"). Like thousands of other believers peacefully practising their religion outside strict State controls in Uzbekistan, they were targeted in a government crackdown and branded as "religious extremists" and "members of banned religious organizations". Many of the complainants were detained and tortured before fleeing their country.

10.3 Counsel notes that the complainants detailed their personal backgrounds and established their individual risk of torture upon return in their appeals before the State party's courts and constantly referred to the Convention against Torture, European Court of Human Rights case-law and NGOs reports on torture in Uzbekistan. The State party's courts however did not make an individual assessment of their risks of torture. Furthermore, international NGOs, such as ACAT-France, Amnesty International, Human Rights Watch and others submitted numerous letters and appeals to Kazakh authorities, between 2010 and 2011, requesting prevention of their extradition in light of the risk of torture. Counsel argues that the State party was aware of the danger faced by the complainants.

10.4 Counsel observes that the non-refoulement principle is a non-derogable and fundamental principle which shall prevail over bilateral extradition conventions. Counsel also notes that withdrawal of refugee status is not a relevant consideration for assessment of the risk of torture. Even terrorists have the right not to be tortured.

10.5 With regard to the diplomatic guarantees allegedly provided by Uzbekistan, counsel considers them unreliable and notes that there is no independent and effective post-extradition monitoring mechanism in Uzbekistan.¹² She notes that the United Nations Special Rapporteur on Torture and the European Court of Human Rights have both found

⁹ See communication No. 249/2004, *Dar v. Norway*, decision adopted on 11 May 2007, para. 16.4.

¹⁰ Human Rights Watch, "Nowhere to turn: torture and ill-treatment in Uzbekistan", 2007.

¹¹ European Court of Human Rights, *Ismailov and others v. Russia*, Application No. 30352/03, 6 November 2008; *Sultanov v. Russia*, Application No. 15303/09, 4 November 2010.

¹² ECHR, *Ergashev v. Russia*, Application no. 12106/09, 20 December 2011, para. 114.

that diplomatic assurances from the Uzbek Government do not release States from their obligation not to return an individual to a risk of torture. The United Nations Human Rights Committee, in its concluding observations on Kazakhstan, recommended that the State party exercise the “utmost care in relying on diplomatic assurances”. She also notes that Kazakhstan did not provide a copy of these alleged guarantees to the Committee. With regard to the alleged monitoring mechanisms, counsel observes that the mandate and confidentiality rules of the International Committee of the Red Cross prevent any report on conditions in Uzbekistan from being submitted to Kazakhstan. Moreover, WHO, when contacted by counsel denied having received any instruction from the Uzbek authorities to monitor the situation of the complainants and noted that it does not have access to prisons. “Other international human rights organizations” do not have any access to places of detention in Uzbekistan.¹³

10.6 Counsel endeavoured to monitor the complainants’ situation, but no one has been able to visit them or to provide any information regarding their whereabouts and their treatment. According to press articles, five of the complainants were given long sentences between August and November 2011.¹⁴ For example, Ahmad Boltaev was convicted to 13 years’ imprisonment. Others were tried, but the outcome is unknown as there is no media coverage or independent trial monitoring. Counsel states that she believes that the complainants were not assisted by independent lawyers and that their right to a fair trial was breached.

10.7 Counsel also considers that the State party failed to take effective measures to prevent acts of torture in this case, in violation of article 2 of the Convention against Torture. It also failed to provide the complainants with access to an effective remedy against their extradition, in violation of article 22 of the Convention.¹⁵

10.8 With regard to the fight against terrorism, counsel notes that it should be carried out in compliance with human rights law¹⁶ and the State party’s obligation not to expel individuals who risk torture is absolute. If the complainants constituted a danger to the security of the State party, the authorities should have charged them with a crime and tried them in their courts.

10.9 With regard to the remedies, counsel refers to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims¹⁷ and requests that the State party be ordered to ensure the return of the complainants,¹⁸ and compensation and rehabilitation pursuant to article 14 of the Convention should be given to them. The State party should

¹³ Human Rights Watch was the last international NGO operating in Uzbekistan and the Government closed their office in June 2011.

¹⁴ Ozodlik, 18 August 2011, Ўзбекистонга экстрадиция қилинган қочқинлар устидан ҳукм ўқилди (in Uzbek) ; <http://www.ozodlik.org/content/article/24301128.html>; Radio Free Europe, 23 August 2011, Uzbeks Extradited From Kazakhstan Stand Trial For Extremism (in English) http://www.rferl.org/content/extradited_uzbeks_tried_for_extremism/24305622.html; Radio Ozodlik, 30 September 2011, Ўзбекистонга қайтарилган уч қочқинга ҳукм ўқилди (in Uzbek), <http://www.ozodlik.org/content/article/24344491.html>.

¹⁵ See communication No. 319/2007, *Singh v. Canada*, decision adopted on 30 May 2011, para. 8.

¹⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Ten areas of best practices in countering terrorism (A/HRC/16/51), principle 1.

¹⁷ General Assembly resolution 60/147.

¹⁸ See communication No. 249/2004, *Dar v. Norway*, decision adopted on 11 May 2007.

also review its system of diplomatic assurances and its judicial system with a view to avoiding similar violations in the future.¹⁹

State party's further information

11.1 On 11 May 2012, pursuant to a request by the Committee during the oral hearing, the State party submitted copies of the guarantees by the Uzbek authorities as well as some of the District Court decisions²⁰. From the documents, it transpires that, on 6 September 2010, the State party requested guarantees for the 29 complainants, in particular that the prosecution would not be based on political motives and that they would not be subject to any discrimination, torture, inhuman or degrading treatment or punishment, and that, if necessary, the State party's authorities could visit the complainants at any time during the criminal proceedings to verify that their rights were being upheld. On 7, 11, 12 and 20 October 2010 and 10 January 2011, the General Prosecutor of Uzbekistan provided guarantees for each one of the complainants, stating that Uzbekistan is a party to the Covenant on Civil and Political Rights and the Convention against Torture. It further noted that, according to articles 16 and 17 of the Uzbek Criminal Code, justice is carried out according to the principle of equality of arms, without discrimination, and nobody can be subject to torture, inhuman or degrading treatment. Any act or decision against human dignity, causing a threat to someone's health, or physical or mental pain is forbidden. It also authorized the authorities of Kazakhstan to visit each one of the complainants in detention and to receive information on their criminal proceedings. The Uzbek authorities further guaranteed that the complainants' criminal proceedings were in conformity with the provisions of the Uzbek Criminal Procedure Code and its international obligations.

11.2 On 5 May 2012, the General Prosecutor of Uzbekistan informed the State party that out of the 29 extradited individuals, 25 have been sentenced. Mr. Rakhmatov, Mr. Yuldoshev and Mr. Pulatov were sentenced to three years of non-custodial correctional labor.²¹ The Uzbek authorities provided legal aid for all complainants and some of them had their own lawyers. One complainant refused legal aid and defended himself.²² No complaints of torture or ill treatment have been raised. The criminal proceedings were public. They also state that they are currently considering the possibility that the Kazakh authorities may visit the complainants in detention. The Uzbek authorities further mention that they have set up a mechanism to implement the recommendations of United Nations treaty bodies.

Counsel's further comments

12.1 On 16 May 2012, counsel submitted further comments, noting that the communication was submitted in December 2010 and that at that time, all the documents presented by the State party on 11 May 2012 were already in its possession and the State party has not explained why it submitted the documents only at this late stage of the proceedings.

12.2 With regard to the court decisions, counsel notes that it provides evidence that the complainants raised the issue of non-refoulement and the risk of ill-treatment upon their return to Uzbekistan; however that their arguments were rejected summarily without

¹⁹ See communication No. 327/2007, *Boily v. Canada*, decision adopted on 14 November 2011, para. 15.

²⁰ The State party provided court decisions of the first instance court for 11 complainants.

²¹ The State party does not provide information regarding the sentences of the remaining 23 complainants.

²² No name is mentioned.

examination. Counsel further notes that the court did not rebut the complainants' arguments about fair trial violations and the State party did not address these allegations.

12.3 Counsel further submits that the diplomatic assurances have been submitted belatedly and that they are vague, not specific, and do not provide for any effective follow-up mechanism. The guarantees were given in response to the State party's Prosecutor General's request, in which he states that the authorities have no doubt that Uzbekistan would comply with its international commitments. Furthermore, the text of the assurances sought were included in the letter by the Kazakh Prosecutor General and therefore constituted pure formality, without having any impact on the State party's decision with regard to extradition of the complainants.

12.4 Counsel further argues that the right to visit the complainants by the State party's authorities was provided mostly in October 2010; however it was only in its further submission of 11 May 2012 that the State party informed the Committee that it was considering the possibility of visiting the complainants. It has not provided any explanation as to why it has not visited them earlier. Counsel cites European Court of Human Rights case-law²³ and notes that the only case in which diplomatic assurances were considered a sufficient guarantee against torture was when the monitoring in the place of detention was delegated to an independent human rights NGO.

Issues and proceedings before the Committee

Consideration of the merits

13.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

13.2 The Committee must determine whether the forced removal of the complainants to Uzbekistan violates the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee takes a decision on the question in the light of the information, which the authorities of the State party had or should have had in their possession at the time of the extradition. Subsequent events are useful for assessing the information, which the State party actually had or should have had at the time of extradition.

13.3 In assessing whether the extradition of the complainants to Uzbekistan violated the State party's obligations under article 3, of the Convention, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

13.4 The Committee recalls its general comment No. 1 (1996) on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being 'highly probable',

²³ ECHR, *Othman v. the United Kingdom*, judgment of 17 January 2012.

but it must be personal and present". In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.²⁴

13.5 The Committee notes counsel's arguments that the complainants and other individuals returned to Uzbekistan pursuant to extradition requests were held in incommunicado detention and therefore subjected to a risk of torture and ill-treatment. It also notes counsel's claim that use of torture and ill-treatment in Uzbekistan remains systematic and Muslims practising their faith outside official State control, as well as persons charged with religious extremism and attempts to overthrow the constitutional order have been specifically targeted. The Committee also notes that the State party rejected the complainants' request for asylum or reinstatement of their revoked refugee status²⁵ on the grounds that they would pose a threat to the State party and could cause significant damage to its security and that of other countries. It also notes counsel's argument that the proceedings in the State party leading to the extradition of the complainants were not fair, as no interpreter was provided, they had limited access to lawyers and the lawyers did not have access to the files. It further notes the State party's assertion that its proceedings were monitored by UNHCR and officials of the State party's Human Rights Office who did not receive any complaints, and that legal representation and interpretation was guaranteed. With regard to the complainants' allegation that they risk torture in Uzbekistan, the Committee notes the State party's argument that Uzbekistan is party to the International Covenant on Civil and Political Rights and to the Convention against Torture and that Uzbekistan issued diplomatic assurances guaranteeing that the complainants would not be subjected to torture or cruel, inhuman or degrading treatment. It also notes that according to the State party, Uzbekistan assured it that international organizations could monitor the detention facilities. The Committee notes that counsel has rejected this assertion and noted that the rules of ICRC did not allow any reports to be made to the State party's authorities and that the other organizations mentioned did not have access to places of detention. The Committee further notes counsel's claim that in the cases of four of the 29 complainants UNHCR was against their extradition and that counsel did not have access to information about the UNHCR position in other cases.

13.6 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on Uzbekistan's third periodic report²⁶, in which it expressed its concern about numerous, ongoing and consistent allegations of routine use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement and investigative officials or with their instigation or consent, and that persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention.

13.7 The Committee notes that all 29 complainants are Muslims reportedly practising their religion outside of official Uzbek institutions or belonging to religious extremist organizations. It also notes that the complainants were extradited pursuant to a request from Uzbekistan accusing them of serious crimes, including religious extremism and attempts to overthrow the constitutional order, and on the basis of the State party's assessment that they posed a security threat to its citizens and citizens of other countries. The Committee reiterates its concern, expressed in its concluding observations, about forcible returns to Uzbekistan in the name of regional security, including the fight against terrorism, to

²⁴ General comment No. 1, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 6.

²⁵ 12 of the complainants had UNHCR refugee status until August 2010.

²⁶ CAT/C/UZB/CO/3.

unknown conditions, treatment and whereabouts.²⁷ It also notes that the non-refoulement principle in article 3 of the Convention is absolute and the fight against terrorism does not absolve the State party from honouring its obligation to refrain from expelling or returning (“refouler”) an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.²⁸ In this context, the Committee also observes that the non-refoulement principle in article 3 of the Convention is absolute even if after an evaluation under the 1951 Convention relating to the Status of Refugees, a refugee is excluded under article 1 F (c).

13.8 In the circumstances of the present case, the Committee considers that in its own concluding observations, as well as in the information presented to it, the pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals practising their faith outside of the official framework, has been sufficiently established. In addition, it observes that the complainants argued that they were subjected to religious persecution, in some cases including detention and torture, before they fled to Kazakhstan.

13.9 The Committee recalls that under the terms of its general comment No. 1 on the implementation of article 3 it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.²⁹ In the present case, the Committee notes that the State party has not provided evidence either in writing or orally refuting the complainants’ claims that their extradition proceedings did not satisfy minimum fair trial requirements (e.g. sufficient time to prepare the defence, limited access to lawyers and interpretation) and that there was no individualized risk assessment of each complainant’s personal risk of torture upon return to Uzbekistan. The Committee observes that whereas the first instance court (some decisions have been provided to the Committee) referred to the domestic legislation, as well as to the 1951 Convention relating to the Status of Refugees, it did not carry out an individualized risk assessment pursuant to article 3 of the Convention or the non-refoulement principle in the domestic legislation. Moreover, the State party failed to respect the interim measures requested by the Committee. Nor did the State party examine the arguments raised by the complainants on the absence of a fair trial and their risk of torture upon return to Uzbekistan. The Committee concludes that the State party has not properly examined the complainants’ claims that they would face a foreseeable, real and personal risk of torture upon return to Uzbekistan. In the context of the case, taking into account the written and oral submissions by the parties, the Committee concludes that the complainants, who have all been charged with religious extremism or membership of extremist or terrorist organizations in Uzbekistan and were extradited by the State party on the basis of those charges, have sufficiently demonstrated their foreseeable, real and personal risk of torture upon return to Uzbekistan. Accordingly, the Committee concludes that in the circumstances of the present case, the State party’s extradition of the complainants to Uzbekistan was in breach of article 3 of the Convention.

13.10 Moreover, the State party has invoked the procurement of diplomatic assurances as sufficient protection against this manifest risk. The Committee recalls that diplomatic

²⁷ CAT/C/KAZ/CO/2, para. 15.

²⁸ See communications No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997, No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para 5.6, and No. 297/2006, *Singh Sogi v. Canada*, Views adopted on 16 November 2007.

²⁹ General comment No. 1 (see note 24 above) and inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

assurances cannot be used as an instrument to avoid the application of the principle of non-refoulement. The Committee notes that the State party failed to provide any sufficiently specific details as to whether it has engaged in any form of monitoring and whether it has taken any steps to ensure that the monitoring is objective, impartial and sufficiently trustworthy.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention.

15. In conformity with article 118, paragraph 5, of its rules of procedure, the Committee urges the State party to provide redress for the complainants, including return of the complainants to Kazakhstan and adequate compensation. It wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views.

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