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Human Rights Committee

Communication No. 2234/2013

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

Submitted by:	M.T. (represented by counsel, the Redress Trust and the International Federation for Human Rights)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	18 December 2012 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 February 2013 (not issued in a document form)
Date of adoption of Views:	23 July 2015
Subject matter:	Human rights defender convicted on false criminal charges and tortured while in detention
Procedural issues:	Admissibility; substantiation
Substantive issues:	Torture, arbitrary detention, ill-treatment, fair trial, arbitrary interference with privacy, freedoms of expression, association and assembly, discrimination, effective remedy
Articles of the Covenant:	2 (3) read separately and in conjunction with 7, 9 (1), (2) and (4), 10 (1) and (2) (a), 14 (1) and (3) (b) and (e) and (5), 17, 19 (2), 21, 22 and 26
Articles of the Optional Protocol:	2

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Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (114th session)

concerning

Communication No. 2234/2013*

Submitted by:	M.T. (represented by counsel, the Redress Trust, and the International Federation for Human Rights)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	18 December 2012 (initial submission)

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

Meeting on 23 July 2015,

Having concluded its consideration of communication No. 2234/2013, submitted to it under the Optional Protocol to the Covenant,

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 (4) of the Optional Protocol

1. The author of the communication is M.T., an Uzbek national, born in 1962. She has resided in France, where she was granted refugee status, since 15 March 2009. She is an independent journalist and founder of the O'tyuraklar human rights organization. She claims to be a victim of violations by Uzbekistan of article 2 (3) read separately and in conjunction with articles 7, 9 (1), (2) and (4), 10 (1) and (2) (a), 14 (1) and (3) (b) and (e) and (5), 19 (2), 21, 22 and 26. The author is represented by counsel.[1]

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The texts of an individual opinion of Committee member Dheerujlall Seetulsingh (partly dissenting) and individual opinion of Committee members Sarah Cleveland and Olivier de Frouville (concurring) are appended to the present Views.

[1] The Covenant and the Optional Protocol entered into force for the State party on 28 December 1995.

The facts as presented by the author

2.1 On 1 July 2002, the author was arrested by two police officers, who did not inform her of the reasons for her arrest. After the arrest, she was interrogated by the Head and the Deputy Head of the Kirgulin Region Police Department about her human rights activities, beaten and threatened with rape. On 2 July 2002, she was charged with offending an officer and refusing to follow police orders. A judge ordered her release from detention, but transferred the case to the District Procurator for further investigation. The case was eventually dismissed for lack of evidence. On 5 September 2002, a criminal investigation was opened into the author's arrest and ill-treatment; however, the investigation was closed without charge.

2.2 On 15 June and 20 August 2003, the author picketed the Regional Procurator's Office to protest against human rights violations. Both times, she was attacked by groups of women, whom she believes to be prostitutes paid by the authorities to carry out the attacks,[2] who beat her, destroyed her posters and stole her personal items. The second attack left her hospitalized for 14 days. The authorities were present during the attacks but failed to intervene, even filming the second incident instead. On both occasions, charges were filed against the author for holding illegal demonstrations, but were dismissed by the courts on 14 August 2003 and 2 February 2004, respectively.

2.3 On 15 April 2005, unidentified officials in plain clothes arrested the author and brought her to the Bektemir District Department of Internal Affairs, where she was interrogated about her human rights activities and accused of spreading propaganda against the Government. Subsequently, one of the police officers took her to an office where three unidentified men beat her and took turns in raping her several times until she lost consciousness. She was eventually released the same day without charge. After being threatened by the Head of the Criminal Investigations and Anti-Terrorism Unit of the Ferghana Police Department, she refrained from filing a complaint.

2.4 On 13 May 2005, the day of the Andijan events, the author was arrested and detained at the Ferghana Police Department until 16 May 2005 without charge. During her detention, she was not allowed to see her lawyer or her family.

2.5 On 7 October 2005, 30 heavily armed police officers arrested the author at her home. Before being taken to the police station, she was charged with extortion. Her flat and offices were searched and personal and work-related items were seized in her absence. She was questioned for several hours about her organization and its funding. Her repeated requests to have her lawyer present were rejected.

2.6 On 8 October 2005 at around 6 a.m., the author was transferred to a temporary holding cell in the basement of the police station. She was allowed to see her lawyer for the first time at around 5 p.m. on the same date. The police continued to question her for about three hours, in the presence of her lawyer. The transcript of the interrogation, which the author was asked to sign, did not reflect her testimony, and she refused to sign it. The author was not presented to a judge for a review of the legality of her arrest. Contrary to Uzbek law, she was not brought before a procurator for the first 10 days of her detention.

2.7 On or around 18 October 2005, the author was transferred to Ferghana Remand Centre No. 10, where she was held until January 2006. On 29 January 2006, the author was transferred to a cell in the basement of Kuyi Chirchik District Police Station, where she was held until the end of her trial on 6 March 2006. During the detention, she was denied medical care. She was placed in detention together with convicted persons. Her lawyers

[2] The author submits articles describing cooperation between police and prostitutes in Uzbekistan.

were denied access to her on several occasions and were not allowed to speak to the author confidentially. On 24 December 2005, the prosecution informed the author's lawyers that her case had been broadened to include 18 charges rather than 2 charges. The author's lawyers had only 15 days to study the 13 volumes of the case file before her trial started on 30 January 2006.

2.8 During the trial, the author was not allowed to meet her lawyers outside the court room. Her lawyers could not call crucial witnesses for her defence, and the Court prevented cross-examination of key prosecution witnesses. The prosecution failed to provide her lawyers with three volumes of the relevant evidence and the Court denied the lawyer's request for access to these volumes. On 6 March 2006, the Tashkent Criminal Court found the author guilty of 13 charges and convicted her to eight years' imprisonment. The appeal chamber of the criminal division of the Tashkent Regional Court dismissed the author's appeal against the verdict on 30 May 2006.

2.9 On 6 March 2006, the author was imprisoned in the women's ward of Remand Centre No. 1. On 7 July 2006, she was transferred to a women's colony, where she remained until her release on 2 June 2008. Upon her arrival at the colony, she was placed in a psychiatric ward, together with drug addicts and dangerous criminals. The administration of the women's colony argued that, as the author had been in need of medical assistance during trial, it was best to put her in the psychiatric unit in order for her to adapt to the women's colony. The author had neither requested nor needed psychiatric treatment before or during her trial and no psychiatric assessment of the author was ever carried out. While in the ward, she was threatened by another inmate; she was injured during a fight between inmates and medical personnel, yet did not receive medical treatment; medical staff tried to give her injections for her "condition", yet refused to inform her what the medication was. The author's lawyers succeeded in having her moved to a different part of the colony after 10 days in the psychiatric ward.

2.10 During her imprisonment, the author was forced to work nine hours a day, followed sometimes by seven hours of forced standing. Her complaints regarding such incidents were either not transmitted by the wardens, or were ignored by the administration and the procurator.[3] From July 2006 to April 2008, the wardens continuously accused the author of violating prison regulations, yet she was denied the possibility to review the documentation that served as a basis for the accusations. When the author went on a hunger strike in November 2006 to protest against her treatment, three prison wardens took her to a punishment cell, where they handcuffed her and hung her by a hook on the wall. One of them placed one end of a dirty hose in a toilet and threatened that she would be force-fed with it. She was left hanging from the wall and displayed to a group of law students who were brought in her cell. Following a visit from her brother in January 2007, during which the author informed him about the detention conditions, wardens at the women's colony forced her to stand outside in the rain in freezing conditions for two hours.

2.11 The author submits that she spent a total of 112 days in solitary confinement. The law prohibits detention for more than 15 days. On several occasions, the author was released after 15 days for a few hours and then placed again in isolation. She was deliberately exposed to freezing conditions, resulting in a deterioration of her health. She was physically attacked by prison wardens, forced to stand naked in the cold until she lost consciousness. She did not have access to her lawyers from 8 July 2006 to 2 June 2008. She

[3] When the author was able to see the procurator in charge of prison oversight around March or April 2007, she reported being ill-treated. The procurator failed to respond to her complaint. Instead, prison officials and a deputy procurator ordered her to sign a statement that she had no complaints against prison officials.

was not allowed to receive any visits from her family or friends between January and August 2007.

2.12 On 18 March 2008, the author was operated against her will. The authorities failed to inform her about the reasons for the surgery, and did not tell her that her uterus was to be removed during the surgery. After having been returned to the colony, where she did not receive any medication, she was released on 2 June 2008 on medical grounds.

2.13 After her release, the author sought medical treatment; however, her doctors did not have access to her complete medical file from the women's colony, as the author's requests for the file were denied. The author submits that, on 13 October 2008, she travelled to Germany, where she sought medical care. Additionally, surgery was carried out on the author in Switzerland. Doctors in both Germany and Switzerland encountered problems when seeking to establish why the author had been operated on. Owing to fear for her and her family's safety, the author subsequently left Uzbekistan for France in March 2009.

2.14 As a result of the torture and incarceration, the author has difficulties walking, severe diabetes, significant problems to her eyesight, depression, memory loss and anxiety. The author was examined by medical specialists from TRACES and the medical centre of the non-governmental organization Parcours d'exil, who found that she was suffering from post-traumatic stress disorder, and that her allegations were consistent with the their findings.

The complaint

3.1 The author submits that, in violation of article 7 of the Covenant, from July 2002 to June 2008 she was the victim of an officially sanctioned campaign of harassment, ill-treatment and torture in response to her human rights activities. While in the Ferghana Remand Centre No. 10 and in prison, the author was subjected to a wide range of severe abuses by the prison wardens and the prison administration aimed at breaking down her resistance in order to force her to confess to running an illegal organization and to request a pardon from the President. The author submits that a person in custody should not be subjected to any medical procedures without informed consent. The forced surgery included her forced sterilization, which amounts to an additional violation of article 7.

3.2 The author further submits that the State party's failure to adequately investigate her allegations of torture violated article 2 (3), read in conjunction with article 7.

3.3 With regard to article 10, the author claims to be the victim of a breach of numerous provisions of the Standard Minimum Rules for the Treatment of Prisoners, as she was not, for example, provided with adequate medical care, separated from convicted prisoners or allowed to present a defence with regard to disciplinary measures. She was systematically denied contact with the outside world for prolonged periods of time. The authorities furthermore repeatedly rejected her requests for access to her medical file.

3.4 With regard to her arrest on 7 October 2005 the author submits that the authorities failed to promptly inform her of the reasons for her arrest and detention, contrary to article 9 (2) of the Covenant, and to bring her before a judge or enable her to challenge the legality of detention, contrary to, respectively, article 9 (3) and (4) of the Covenant.

3.5 The author further submits that the State party failed to ensure her right to a fair trial by an independent and impartial court contrary to article 14 (1) of the Covenant and to provide her with adequate time and facilities for the preparation of her defence and to communicate with her lawyers contrary to article 14 (3) (b), and to allow for the procedural guarantees enshrined in article 14 (3) (e). The author also submits that the review of the trial protocol and consideration by the appeal chamber of the author's appeal were carried out and dismissed by the Tashkent Regional Court, the same Court, if not the same judges,

that rendered the judgement against the author. This does not constitute a higher tribunal as stipulated in article 14 (5). The author's requests for review and appeal to the Supreme Court were denied.

3.6 The author claims that her arrest on 7 October 2005 by over thirty heavily armed law enforcement officers and the raid of her apartment and offices in her absence breached article 17 (1) of the Covenant.

3.7 The author submits that, when she was attacked while holding pickets in May and August 2003, the authorities failed to adequately investigate the attacks and, on both occasions, she was charged for holding an unlawful demonstration. Even though these charges were eventually dropped, the attacks, the failure to hold the perpetrators responsible and the prosecutions of the author were carried out on account of her human rights activities, and as such constituted an interference with her right to freedom of expression and opinion that were not justified by any of the exceptions provided for in article 19 (3) (a) and (b). The author was also detained, charged, indicted and later convicted and imprisoned for allegedly distributing propaganda material, threatening the public order and establishing an unregistered public organization.

3.8 The law enforcement authorities charged her with organizing unlawful demonstrations with regard to the pickets held in May and August 2003. These restrictions on her freedom of assembly are not justified, as they were neither in the interest of national security or public safety, nor necessary for the protection of public health, morals or rights and freedoms of others. The measures are also disproportionate in violation of article 21 of the Covenant.

3.9 The author was detained, charged, indicted, convicted and imprisoned for having established an unregistered public organization. The severe restriction on her freedom of association did not meet any of the criteria listed in article 22 (2) of the Covenant.

3.10 The author submits that the gang rape committed against her on 15 April 2005 at Bektemir District Department of Internal Affairs, as well as her sterilization without her consent constitute violations of article 26, as they amount to discrimination on the basis of her sex. The author submits that, by arbitrarily and unlawfully arresting, detaining, prosecuting and convicting her on account of her human rights activities, the State party also violated her rights under article 26, which protects against discrimination on grounds of political or other opinion.

State party's observations on the merits

4.1 On 4 July 2014, the State party submits that the author's complaint had been reviewed by the competent authorities in Uzbekistan, who concluded that her allegations were invented and biased. Its verification established that between 2002 and October 2005 no criminal investigations were initiated against the author and the Ferghana Regional Court did not hear any administrative affairs against her.

4.2 The State party submits that, on 6 October 2005, the author was arrested by officers of the Ferghana Regional Procurator's Office when she was being given money by a certain Mr. M. On 7 October 2005, a criminal investigation for extortion was initiated and, on 8 October 2005, extortion charges were brought against the author. She was detained on remand and, on 14 October 2005, she was placed in Ferghana Remand Centre No. 10. On 21 January 2006, the author was moved to Ferghana Remand Centre No. 1, in accordance with the decision of the Tashkent Regional Court of 18 January 2006.

4.3 In accordance with the 6 March 2006 verdict issued by the Tashkent Regional Court, which was confirmed upon appeal on 30 May 2006, the author was found guilty of 13 different charges and was convicted to eight years' imprisonment. According to the verdict,

the author had founded the illegal O'tyuraklar organization; she was engaged in the production and dissemination of materials containing threats to public safety and the public order. She received financial assistance from various foreign organizations to operate the above-mentioned illegal organization, used these funds in a manner not corresponding to the purpose for which they had been granted, and evaded paying taxes. Furthermore, she gained the trust of two individuals and extorted from them 100,000 Uzbek sum and 900 United States dollars; she also attempted to extort money from the family of a certain Mr. M. and was apprehended as she received 600,000 sum. In her capacity of manager of the Hakikat company, she committed forgery in order to obtain a loan of 800,000 sum. The guilt of the author was fully proven by the testimony of the victims and other evidence. The verdict and the second instance decision were amended by a Supreme Court ruling of 2 June 2008 whereby her sentence was reduced to a three-year suspended sentence.

4.4 The State party submits that the author's claims regarding impermissible treatment against her while in pretrial detention had been considered and could not be confirmed. The State party notes that meetings of persons under arrest with their legal representative and relatives are allowed with the written permission of the official in charge of the criminal case, and that administrators of detention centres are not among officials authorized to issue permission for meetings. All parcels received in the detention centre for the author were handed over to her in a timely manner by the administration. During her stay in the pretrial detention centre, the author did not request medical assistance from the centre's medical personnel. During the daily inspection of the cells and questioning by the personnel of the centre, the author did not have any health-related complaints.

4.5 The State party submits that, according to paragraph 56 of the Code of Execution of Punishments, convicted persons are placed in an admission ward upon arrival, for a period not exceeding 15 days, in order that their personality and how they are adjusting to incarceration can be examined. The admission ward is not a medical or psychiatric institution. Upon arrival on 7 July 2006 at the detention centre in Tashkent, the author was placed in the admission ward, subjected to a complete medical examination, clinical tests and a biochemical analysis. She was diagnosed with emotional exhaustion, cardio-psychoneurosis and hypertension. She received both inpatient and outpatient care. Upon the conclusion of the adjustment period, the author was transferred to join the general prison population in a satisfactory condition. She did not have any complaints regarding a deterioration of her health. There are no facts supporting the claim that the author had a fight with the medical personnel, or that there were any attempts to give her any injections. Her claims that, after 10 days spent in the psychiatric unit, her attorney was able to obtain her transfer to a different unit in the colony are "absurd and agenda-driven", since the time frame for the adjustment period for the convicted individuals is established in article 56 of the Criminal Code, and defence attorneys are not able to influence it.

4.6 Over the course of her time in the detention facilities, the author did not request medical attention from the doctors of the facilities. The State party submits that the author's claims that she was forced to work nine hours a day and had to spend seven hours a day on her feet were fabricated. According to article 88 of the Criminal Code, prisoners are involved in labour according to their sex, age, health and ability to work. The working conditions are regulated in the labour laws; the length of the working day for the detainees is established in the Labour Code and does not exceed 40 hours per week; the author worked in the manufacturing facility in the sewing unit, which cannot be done while spending seven hours on her feet. The employee of the facility named in the author's communication was an instructor in the young offenders' unit and could under no circumstances have been in contact with the author.

4.7 The State party maintains that the author was not subjected to any illegal acts, rough treatment or torture by the administration of the facility. She was not refused access to the

administration of the facility or to the procurator. The administration of the facility conducts daily rounds and conducts interviews with the detainees, inquiring specifically regarding the treatment by the personnel. On a weekly basis, the facility is visited by the special procurator for prison oversight (who also conducts interviews with the convicted individuals with the goal of identifying prohibited treatment, violations of conditions of detention etc.). The facility has a box for correspondence placed in a highly visible location, addressed to the procurator, which can only be accessed by a member of the procurator's office.

4.8 The State party submits that, while serving her sentence, the author never announced any "hunger strikes" and was never shown off in a state of being suspended from a wall to law students. Visits to penal colonies are not on the curriculum of the law school.

4.9 In response to the allegations that the author was placed in solitary confinement on 10 occasions and that she spent 112 days in various isolations cells, the State party submits that the author was an inveterate violator of the rules of confinement, on numerous occasions the facility's personnel had to conduct conversations with her of an instructive and preventive nature, but she did not take any positive lessons for herself and continued to intentionally violate the rules of confinement. After repeated warnings for gross violations of rules of confinement the administration of the facility transferred the detainee to the disciplinary unit for 15 days.

4.10 The State party submits that the detention facility UYa 64-7 is located within the centre of Tashkent and connected to the municipal water and heating supplies and there were no problems with the heating of the various blocks (including the disciplinary units) of the facility. Throughout its premises, the windows have panes of glass and the floors are made of wood and are dry. The staff of the disciplinary unit conducts daily rounds inspecting the premises. In the event that the cells show any need for repair, the detainees are transferred to another cell. During the period that the author spent in the disciplinary unit, she did not make any complaints. Her allegations regarding the supposed instances of prohibited treatment by the facility's personnel were investigated, but could not be confirmed. The author's complaint is fabricated, which is confirmed by the contradictory nature of her allegations. For example, she indicated in one paragraph that after 58 days of continuous detention in the a solitary cell in November and December, she lost consciousness and was only then transferred to the medical unit; in another paragraph she claims that she spent up to 40 days in solitary confinement.

4.11 The State party maintains that, while she stayed in solitary confinement, the author was not subjected to any physical or psychological pressure from the administration of the facility, nor did she make any complaints or statements to the administration, including about any deterioration of her health. Her claims that she was forced to stand naked in the cold in February 2007 in the hallway "have no basis in fact and are of an obviously slanderous nature towards the employees of the facility". Regarding the allegations that the author was refused medical attention, the State party submits that, upon arrival at the detention facility, the author underwent a medical examination. While serving her sentence she was under regular follow-up care and, at the recommendation of a doctor, she was provided with qualified medical attention on numerous occasions, both as an outpatient and an inpatient. Medical staff of the correctional facility and specialists from the Ministry of Health conducted examinations of the author using different diagnostic techniques and she received appropriate medical care for her condition.

4.12 The State party maintains that, with regard to the medically necessary operation performed on the author in March 2008, she had been notified in a timely manner about the necessity of the upcoming surgical procedure to be conducted in a civilian facility, and that this surgical procedure could not have been performed without her consent. After the surgery, she was returned to the correctional facility in a satisfactory condition in April

2008 and she was placed in the inpatient unit for further observation. By May 2008, her health had improved and she was released to the general population.

4.13 With regard to the possibilities for prisoners to submit statements and complaints, all prisoners can complain to the facility's administration and members of the procurator's office. All petitions are registered according to the facts stated therein and a thorough investigation is conducted. There were no obstacles preventing the author from petitioning the administration of the facility or the procurator's office. All her complaints in that regard are groundless. The instances described in the communication did not occur and could not have occurred. The personnel of the law enforcement agencies acted strictly within the bounds of their professional duties. The penitentiary facilities of Uzbekistan implement in a timely manner measures to prevent the occurrence of any actions that would infringe on the legal rights of individuals who are being held in detention or who have been sentenced to incarceration. If an instance of use of physical force or prohibited treatment is discovered, the guilty parties are strictly disciplined or charged with a criminal act.

Author's comments on the State party's observations

5.1 On 11 September 2014, the author submits that, in her communication, she has set out a detailed and consistent account of a campaign of persecution by the State party's authorities directed against her as a result of her human rights activities, which lasted from early 2002 until the author was forced to leave Uzbekistan in March 2009. It involved, inter alia, arbitrary arrest and unlawful detention, torture and other forms of cruel, inhuman or degrading treatment or punishment and a violation of her right to a fair trial. She substantiates her account of these violations with medical and psychological reports, witnesses' testimonies and copies of court orders, decisions of the authorities dismissing her complaints, judgements and media articles and reports of non-governmental and international organizations, including the United Nations.

5.2 The author submits that the State party's observations consisted in an outright denial of her allegations and that the State party has not adduced any relevant evidence in support of its account and did not address the evidence submitted by the author. The author notes that the State party chose not to address a number of violations highlighted in her complaint, in particular the lack of access to her family and her lawyers during her imprisonment in the women's colony in violation of articles 7 and 10 and the violation of articles 17, 19-21 and 26.

5.3 In response to the State party's denial that the author has been subjected to torture or any other form of ill-treatment, she provides a detailed account of the different types of persecution to which she was subjected by State officials from 2002 to 2005, ranging from repeated arbitrary arrest and unlawful detention to gang rape, beatings, threats and other forms of torture and of ill-treatment. The author's account is supported by detailed, consistent and multiple pieces of evidence, including the author's affidavit in which she identified the perpetrators of her ill-treatment, a court order of 5 September 2002 to open an investigation against those responsible for the author's arrest and ill-treatment, photographs of the author's injuries, media articles and a reference to one of the incidents in the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment following his mission to Uzbekistan (see A/HRC/7/3/Add.1).

5.4 The State party dismisses the author's account of her gang rape by three security officers. The author provided a detailed account of the rape in her testimony. In the light of the challenges in documenting acts of rape, particularly rape in detention, the author's testimony constitutes sufficient evidence. There is no indication that the State party carried out any effective and impartial investigation into the alleged incidents.

5.5 The State party submits that the author was arrested on 6 October 2005 and, after having been charged on 8 May 2005 with crimes under articles 165 and 168 of the Criminal Code, she was ordered to be placed in detention. According to the State party, however, she was transferred to Ferghana Remand Centre No. 10 only on 14 October 2005. While the author maintains that she was transferred on around 18 October 2005, she notes that the State party admits that she was detained for eight days in a temporary holding cell, contrary to the Uzbek Code of Criminal Procedure, which requires transfer from a temporary holding cell within 72 hours. The State party appears to acknowledge therefore that the author's detention was unlawful, in violation of article 9 (1).

5.6 The author reiterates that the State party failed to ensure a fair trial by an independent and impartial court and to guarantee and uphold her right to equality of arms. The author's detailed allegations included that: her lawyers had been threatened and not been provided with sufficient time to prepare for the trial; the prosecution had deliberately prevented her lawyers from consulting with her and from accessing the entire case file; and her lawyers were not given permission to cross-examine key prosecution witnesses. The State party chose not to address any of the specific allegations or the evidence showing that the author did not receive a fair trial. The author submits that she has discharged her burden of proof and established a prima facie case that the State party is responsible for a violation of article 14.

5.7 The State party claims that it had investigated allegations of ill-treatment against the author during pretrial detention and that the latter remained unsubstantiated. The author submits that she had specified the different incidents of ill-treatment, and provided extensive evidence in support. The State party was therefore in a position to investigate the incidents of ill-treatment since the author had provided dates and names of witnesses and perpetrators of the incidents. The State party does not, however, provide evidence of any investigation into these allegations. The author submits that it is insufficient for the State party to claim that it investigated the alleged incidents of ill-treatment.

5.8 The author reiterates that she has submitted to the Committee two complaints from her lawyer raising the lack of access to her client and that the State party did not address that which was submitted. The author reiterates that, with the exception of a one-hour visit from her daughter in October 2005, the detention authorities refused to allow visits from family and friends for more than three months. The author reiterates that, contrary to the State party's assertion, she did not receive parcels of food and clothes brought to Ferghana Remand Centre No. 1 by her parents.

5.9 The State party fails to provide any evidence to show that qualified medical personnel is employed at those centres, including a medical officer with knowledge of psychiatry as provided for in the Standard Minimum Rules for the Treatment of Prisoners. She maintains that the administration of Ferghana Remand Centre No. 10 failed to provide her with adequate medication on several occasions, and failed to diagnose the impact the conditions of detention had on her, driving her to attempt suicide in late December 2005.

5.10 The State party claims that, upon arrival at the women's colony on 7 July 2006, the author was placed in an admission unit in accordance with article 56 of the Criminal Code. However, it does not produce any evidence to show that or how article 56 was complied with in the present case. The State party also fails to address the submitted evidence, which includes an appeal filed by her lawyer to the prison administration and the administration's response of 24 July 2006, confirming that she was placed on the psychiatric ward. The State party's practice of forcing political prisoners to undergo psychiatric treatment as a form of punishment and retaliation is well documented.

5.11 The author further submits that the State party fails to distinguish between the working hours, and the requirement for prisoners to "do service", requiring prisoners to

stand and keep guard at various posts within the colony. While all prisoners are required to carry out this service once or twice a month for approximately two hours, the administration has a practice of forcing political prisoners to do service several times per month for up to seven hours, during which time they are not allowed to leave their assigned place. The author reiterates that often she had to work for nine hours and then "do service" for seven hours.

5.12 The State party contests the author's account that a particular prison warden humiliated, assaulted and otherwise ill-treated and tortured her, arguing that the said warden was an instructor in the young offenders' unit and therefore could not have been in contact with the author. The author submits that she wrote about the abuse in a letter to her daughter smuggled out of prison. Once the report about the author's abuse was covered by international human rights groups, on 3 January 2007, the prison administration terminated the employment of the warden in question. The author maintains that the above is additional evidence to support was repeatedly placed in punishment cells, claiming that she was a violator of the rules of confinement, but fails to provide any information on how she had allegedly violated the rules of confinement. The State party then dismisses the author's account of having spent a total of 112 days in solitary confinement, arguing that her account is fabricated and contradictory, but fails to address her allegations that the administration made sure that she would not spent more than 15 days in a row in the punishment cells, by releasing her after 15 days, only to send her back several hours later or the next day.

5.13 The author testified in great detail about the inadequacy of, in particular, the punishment cells and stands by her account, which inadequacy is also highlighted in letters the author had sent to various human rights organizations while still in detention.

5.14 Regarding medical treatment while in prison, the author reiterates that while some treatment was provided, it was in general only when her condition became too serious for the authorities to ignore and after repeated requests for treatment had been rejected. Moreover, the State party has failed to provide any details of the treatment allegedly provided to the author, such as the reasons for the treatment or the results of the various examinations. It has also not adduced any evidence such as medical reports, in support of its claim that it provided adequate medical care. The claim that the author received adequate medical care contradicts reports (see para. 2.14 above) confirming that the author's health deteriorated significantly as a result of the conditions in which she was held.

5.15 The author submits that, with regard to the surgery performed on her in March 2008, the State party has not provided any evidence in support of its claim that the surgery was medically necessary, and has not identified the treatment or adduced any medical reports that would show that the hysterectomy was necessary. The State party's failure to provide such information means that, more than six years after the surgery, the author still does not know the reasons for the forced sterilization to which she was subjected. The State party has also failed to demonstrate how it allegedly informed the author about the need for the surgery. Notably, the State party does not expressly refute the author's submission that she did not agree to the hysterectomy. The State party does not address the extensive expert evidence submitted by the author, which shows that it resulted in permanent physical and severe mental damage. The author maintains that she established a more than credible prima facie case that the hysterectomy was carried out without her consent, caused severe pain and suffering and constituted torture, in violation of article 7.

5.16 The author submits that, during the 23 months for which she was imprisoned, the special procurator visited only on two occasions, on or around 20 September 2006 and on or around 28 March 2007. On both occasions, the administration had the author sent to the punishment cells. During the second visit, the administration released her from the punishment cell and allowed her to meet with the procurator, but, although she raised

complaints of ill-treatment, the procurator failed to investigate or take any measures to address those complaints. The author submits that the prison administration regularly reviews complaints placed in the public mailbox in the women's colony. The mailbox is placed in a visible location in the colony, and it is impossible to submit complaints without the administration noticing. Detainees who complained were then "disciplined" and sent to solitary confinement.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee takes note of the author's claim that her rights under article 2 (3) have been violated as the State party did not provide her with effective means of protection of her Covenant rights. The Committee recalls, however, that article 2 (3) of the Covenant can be invoked by individuals only in conjunction with other articles of the Covenant and cannot, in and of itself, give rise to a claim under the Optional Protocol.[4] The Committee therefore considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes the author's claims that the review of the trial protocol, and consideration by the appeal chamber of the criminal division of the her appeal against the verdict were carried out and dismissed by the Tashkent Regional Court, the same court that rendered the initial verdict, and that requests for review and appeal to the Supreme Court were denied and that the above constituted a violation of article 14 (5) of the Covenant. The Committee, however, finds the above claim inadmissible under article 2 of the Optional Protocol, for insufficient substantiation.

6.6 The Committee notes that the State party has not challenged the admissibility of the communication and considers that the author has sufficiently substantiated her remaining claims that raise issues covered under articles 7, 9 (1), (2) and (4), 10 (1) and (2) (a), 14 (1) and (3) (b) and (e), 17 (1), 19 (2), 21, 22 and 26 and article 2 (3) read on conjunction with the above articles of the Covenant for purposes of admissibility. It declares the communication admissible with regard to those provisions of the Covenant and proceeds to its examination on the merits.

[4] Communications 1998/2010, *A.W.K v. New Zealand*, decision of inadmissibility of 28 October 2014, para. 9.4; 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 7.4.

Consideration of the merits

7.1 The 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 (1) of the Optional Protocol.

7.2 The Committee has also noted the author's claims that: on 1 July 2002, she was verbally abused, degraded and humiliated by the Head and the Deputy Head of the Police Department, who inflicted severe physical and mental pain and suffering by kicking and beating her with a truncheon, hitting her head on the door of her cell and tearing open the author's clothes and threatening to rape her; on 15 April 2005, she was gang-raped causing such pain and suffering that she fell unconscious; the detention authorities of Ferghana Remand Centre No. 10 deliberately subjected the author to a detention regime aimed at obtaining a confession from her that she was running an illegal organization; while serving her sentence, over a period of one year and eight months, the author was subjected to a wide range of severe abuses by the prison wardens and the prison administration of the women's colony aimed at breaking her moral and physical resistance so as to force her to confessing to the running of an illegal organization; a forced surgery that included her forced sterilization was performed on her; and all of the above constitute violations of article 7 of the Covenant.

7.3 In that connection, the Committee notes that the author provides detailed account of the different types of persecution to which she was subjected, and her description is supported by detailed and well-documented evidence.[5] The Committee further notes that the author formally complained to various authorities regarding those violations. The Committee notes that the State party has not refuted these allegations, but has merely stated that the verifications conducted could not confirm the author's allegations; and, instead of providing detailed information and explanations to the Committee in refutation, the State party accused the author of having presented "invented and biased" allegations. The Committee notes in particular the State party's submission that the sterilization of the author "could not have been performed without her consent", but considers that this cannot be taken as a credible denial of the author's allegation regarding the forced nature of the medical procedure to which she was subjected.

7.4 In that regard, the Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.[6] The Committee further recalls that the State party is responsible for the security of all persons held in detention and that, when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations.[7] In the absence of any thorough explanation from the State party, the Committee has to give due weight to the author's allegations, particularly to allegations of sexual abuse, a form of extreme gender-based violence.[8] Accordingly, the Committee concludes that the facts before it disclose multiple grave violations of the prohibition of torture and of the author's rights under article 7 of the Covenant.[9]

[5] See paragraph 5.3 above.

[6] See the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 14.

[7] See communication No. 2079/2011, *Khadzhiev v. Turkmenistan*, Views adopted on 1 April 2015, para. 8.4.

[8] See communication No. 1900/2009, *Mehalli v. Algeria*, Views adopted on 21 March 2014, para. 7.10.

[9] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (art. 14), para. 60, and communication No. 1401/2005, *Kirpo v. Tajikistan,* Views adopted on 27 October 2009, para. 6.3.

7.5 The Committee notes the author's allegations that the State party has failed to investigate promptly and efficiently her torture allegations. The Committee recalls that it attaches importance to States parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations.[10] It recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which states that a State party's failure to investigate alleged violations could in and of itself give rise to a separate breach of the Covenant. In the absence of any thorough explanation from the State party as to the investigation into the author's torture allegations, the Committee considers that the State party's competent authorities did not give due and adequate consideration to the author's complaints of torture. The Committee concludes that the information before it discloses a violation of article 2 (3), read in conjunction with article 7 of the Covenant.

7.6 The Committee has noted the author's claims that the gang rape committed against her, as well as the sterilization without her consent, constitute violations of article 26, as they amount to discrimination on the basis of her sex; and that by arbitrarily and unlawfully arresting and detaining, and later prosecuting and convicting, her on account of her human rights activities, the State party additionally violated her rights under article 26, which protects against discrimination on grounds of political or other opinion. The Committee notes that the State party has not refuted these allegations specifically but that it has only stated, in general terms, that no violations of the author's right have taken place in this case. In the circumstances, the Committee considers that due weight must be given to the author's allegations. The Committee notes that the involuntary sterilization together with the rape committed against the author show the specific aggression against her as a woman. Accordingly, the Committee considers that, in the circumstances of the present case, the facts as presented by the author amount to a violation of the author's rights under article 26 of the Covenant.

7.7 The Committee has noted the author's claims that: the State party failed to promptly inform her of the reasons for her arrest and detention, contrary to article 9 (2) of the Covenant, and to bring her before a judge or enable her to challenge the legality of detention, contrary to, respectively, article 9 (3) and article 9 (4) of the Covenant; the State party failed to ensure her right to a fair trial by an independent and impartial court, contrary to article 14 (1), to provide her with adequate time and facilities for the preparation of her defence and to communicate with her lawyers, contrary to article 14 (3) (b), and to allow for the procedural guarantees enshrined in article 14 (3) (e); when she was attacked, while holding pickets in May and August 2003, the authorities failed to adequately investigate the women attacking her and, on both occasions, the author was charged for holding an unlawful demonstration and therefore the State party violated her rights under article 19 of the Covenant; the law enforcement authorities brought criminal charges against her for organizing an unlawful demonstration with regard to the pickets held by the author in May and August 2003, which restricted her freedom of assembly under article 21 and the restrictions were not justified as they were neither in the interest of national security or public safety, nor necessary for the protection of public health, morals or rights and freedoms of others; that the author was detained, charged, indicted and later convicted and imprisoned for the establishment of an unregistered public organization, severely restricting her freedom of association in violation of article 22 (2) of the Covenant.

7.8 The Committee notes that the State party has not refuted these allegations specifically but that it has only stated, in general terms, that no violations of the author's

[10] See communication 2046/2011, *Hmeed and others v. Libya*, Views adopted on 17 October 2014, para. 6.8.

rights have taken place in this case. In the circumstances, the Committee considers that due weight must be given to the author's allegations. Accordingly, the Committee considers that, in the circumstances of the present case, the facts as presented by the author amount to a violation of the author's rights under articles 9 (1), (2) and (4), 14 (1) and (3) (b) and (e), 19 (2), 21 and 22 of the Covenant.

7.9 In the light of the above findings, the Committee will not examine separately the author's allegations under articles 10 and 17 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the State party has violated articles 7, 9 (1), (2) and (4), 14 (1) and (3) (b) and (e), 19, 21, 22 and 26 and article 2 (3), read in conjunction with article 7, with regard to the author.

9. In accordance with article 2 (3) (a) of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy, including carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment, initiating criminal proceedings against those responsible and providing the author with appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State 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 and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views, to translate them into the official language, in an accessible format, and to widely disseminate them.

Appendix I

Individual opinion of Committee member Dheerujlall Seetulsingh (partly dissenting)

1. In paragraph 7.6 of the Views, the majority of the Committee found that the State party violated article 26 of the Covenant in that when the author was in police custody in 2005, she was raped by three unidentified men and in 2008 authorities of the State party caused the author to undergo without her consent a surgical operation whereby her uterus was removed (resulting in a forced sterilization). The majority found that these two acts constituted a specific aggression against the author as a woman. Thus the author was discriminated against on account of her gender. There was no further elaboration on the issue or any in-depth analysis on how article 26 was applicable to such a case. Although the State party submitted its observations, the Committee noted that the State party had not refuted these allegations specifically. I would respectfully disagree with the view that article 26 finds its application in this case.

2. In paragraph 7 of general comment No. 18 (1989) on non-discrimination, discrimination is dealt with as follows:

> the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, properly birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

3. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The existing jurisprudence of the Committee on sex discrimination covers laws and applications of laws which have favoured one gender against the other, placing one at a disadvantage where such differentiation is not reasonable. The duty of the State is to ensure that all citizens are treated equally. When it comes to gender, men and women must be afforded the same treatment whether it concerns, among other issues, immigration law, deportation law, matrimonial property, nationality, income tax or unemployment benefits. Laws must be enforced in a non-discriminatory manner. Where laws discriminate, then the legitimacy of the laws is itself in question. These were well expatiated upon by the Committee in communications No. 35/78, *Cziffra and others v. Mauritius* and No. 172/84, *Broeks v. Netherlands.*

4. In the present communication the author was subjected to treatment which was absolutely illegal and outside the law. She was arrested and imprisoned because of her political opinions. The question of reasonable and objective criteria does not even arise as the acts complained of are illegal acts of torture and inhuman and degrading punishment.

5. There is little justification for the view that the author was a victim of discrimination when she was raped in 2005 by three unidentified persons. True, she was the victim of a severe violence of sexual nature but which had no connection with sex discrimination. In 2008 the author was a victim of another act of a sexual nature when she was operated against her will and her uterus removed. It is not known whether men in the State party too could have been victims of sexual violence and subjected to cruel punishment. There is also no evidence that all women in similar circumstances in the State party are subjected to such horrible treatment. The fact that one individual undergoes such treatment by force is no pointer towards discrimination as such under article 26. It is difficult to connect these acts

with acts of discrimination as understood by the Committee in its general comment No. 18, the Committee's jurisprudence and as generally understood in legal terms. They are brutal acts of repression of dissent. Otherwise, every act of torture and every act of repression could be construed as discrimination. Even the legislation of the State party does not permit such acts.

6. True it is, and regrettably so, that there was a severe violation of article 7 of the Covenant when the author was raped successively by three unidentified persons when she was in police custody in 2005 and where she underwent surgery without being informed of the reason thereof and without giving her consent when she was in prison in 2008. Such heinous crimes and despicable conduct for which the State is responsible are severely condemned.

7. Furthermore, the views of the majority are not totally clear in paragraph 7.6 as to whether there is a finding of discrimination on the ground of political or other opinion as well. The majority takes note of the author's allegations, which are not specifically refuted by the State party and comes to a general conclusion "in the circumstances of the present case" that the author's rights under article 26 have been violated. However, the arbitrary arrest, detention of the author, prosecution, conviction and imprisonment of the author for her human rights activities, while they definitely violate her rights under articles 9, 14, 19, 21 and 22 as pointed out in paragraph 7.7 of the majority's views, do not constitute acts of discrimination under article 26 of the Covenant.

Appendix II

Individual opinion of Committee members Sarah Cleveland and Olivier de Frouville (concurring)

1. The Committee finds that the conduct of State agents in this communication violated, among other provisions, article 26 on prohibition of discrimination on the basis of sex. We agree with this conclusion and write separately to elaborate on the reasoning supporting it.

2. Article 26 guarantees equal protection before the law and prohibits any distinction "based on" an enumerated ground such as sex or political opinion, unless the distinction serves a legitimate aim and is based on reasonable and objective criteria.[1] In the context of sex discrimination, the Committee has repeatedly applied this standard to find invalid legislation that distinguishes between men and women.[2] Article 26, however, is concerned not only with discrimination on the face of the law, but also with "discrimination in fact" against a particular individual, whether practiced by public authorities or private persons.[3] The Committee thus has recognized that article 26 is also violated when State agents treat particular individuals differently based on the prohibited grounds, absent a legitimate aim or reasonable and objective criteria. In this regard, the Committee recently found that a State's failure to adequately take account of a particular individual's disability in the application of its naturalization laws violated article 26.[4] In other cases the Committee has found that differential treatment of particular individuals based on their political opinion violated article 26.[5] In the context of sex discrimination, the Committee has found that the conduct of police, medical and judicial personnel aimed at casting doubt on the morality of an indigenous minor girl who was the victim of rape constituted discrimination based on gender and ethnicity in violation of article 26.[6] The Committee has also held that a State's failure to provide a judicial remedy for the refusal of medical officials to provide a legally available abortion violated article 2 (3) in relation to articles 3, 7 and 17.[7]

3. The author here presents compelling evidence that she was subjected to, inter alia, both gang rape and forced sterilization through the non-consensual removal of her uterus by

[1] See general comment No. 18 (1989) on non-discrimination, para. 13, and communication No. 2001/2010, *Q v. Denmark*, Views adopted on 1 April 2015, para. 7.3.

[2] See communications No. 919/2000, *Müller and Engelhard v. Namibia*, Views adopted on 26 March 2002, para. 6.8, and No. 415/1990, *Pauger v. Austria*, Views adopted on 26 March 1992, para. 7.4.

[3] See general comment No. 18, para. 9.

[4] See communication No. 2001/2010, *Q v. Denmark*, para. 7.5.

[5] See communication No. 309/1998, *Orihuela Valenzuela v. Peru*, Views adopted on 14 July 1993, para. 6.4 (denial of pension benefits based on author's political opinion violated article 26); No. 314/1988, *Chiiko Bwalya v. Zambia*, Views adopted on 14 July 1993, para. 6.7 (interference with efforts to stand for political office because of author's political opinion violated article 26); No. 468/1991, *Oló Bahamonde v. Equatorial Guinea*, Views adopted on 20 October 1993, para. 9.5 (arbitrary arrest, confiscation of passport, and other harassment of author because of his political opinion violated article 26).

[6] See communication No. 1610/2007, *L.N.P. v. Argentina*, 18 July 2011, para. 13.3; also ibid. para. 13.8 (lack of effective remedy to rape victim violated article 2 (3) in conjunction with articles 3, 7, 14 (1), 17, 24 and 26); see communication No. 1900/2009, *Mehalli v. Algeria*, Views adopted on 21 March 2014, para. 7.10 (finding rape by State agents "a form of extreme gender-based violence" in the context of article 7).

[7] See communication No. 1608/2007, *L.M.R. v. Argentina*, Views adopted on 29 March 2011, para. 9.4.

State authorities. The issue in this case is whether the author was subjected to this particularly egregious form of sexual abuse because she was a woman. As other human rights bodies, including the Committee on the Elimination of Discrimination against Women and the European Court of Human Rights, have recognized, violence that is committed on the basis of sex or gender is discrimination.[8] The Committee on the Elimination of Discrimination against Women defines gender-based violence as violence that is directed against a woman because she is a woman or that affects women disproportionately.[9] Under this approach, not all acts of violence committed against women are discrimination; violence is gender based if it is "motivated by 'factors concerned with gender,' such as the need to assert male power and control, to enforce assigned gender roles or to punish perceived deviant female behavior".[10] The mere fact that abuses such as rape or forced sterilization are also capable of being committed against men does not preclude the possibility that they can constitute gender-based discrimination.

4. In the present case, the author presents compelling evidence that she was singled out for egregious harassment, abuse and torture because of her political opinion as a human rights activist. But the peculiarly gendered nature of her abuse — threats of rape by the police, gang rape while in detention and forced sterilization through the removal of her uterus — establishes compellingly that State agents chose the *form* of her abuse because she was a woman. There is no question that this conduct, which the Committee also properly finds constituted torture and extreme gender-based violence, cannot be supported by any reasonable and objective justification or legitimate aim. The Committee thus correctly finds that the author was discriminated against because of her sex in violation of article 26.

[8] See Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), para. 6; European Court of Human Rights, *Opuz v. Turkey*, application No. 33401/02, judgement of 9 June 2009, paras. 187, 190, 202 (citing with approval jurisprudence of the Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights that violence against women is a form of discrimination against women, and finding the State's failure to effectively address domestic violence constituted discrimination in violation of article 14 in conjunction with article 3 of the European Convention on Human Rights); *Mudric v. Moldova*, application No. 74839/10, judgement of 16 October 2013, para. 64 (same).

[9] See Committee on the Elimination of Discrimination against Women, general recommendation No. 19, para. 6.

[10] See M. Freeman, C. Chinkin, and B. Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2012), p. 452.