



КОАЛИЦИЯ ПРОТИВ  
ПЫТОК В КЫРГЫЗСТАНЕ

**ALTERNATIVE REPORT  
OF THE COALITION AGAINST TORTURE IN KYRGYZSTAN**

**implementation of the Convention against Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment by the Kyrgyz Republic  
2014 - 2021**

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## INTRODUCTION

The alternative report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Kyrgyz Republic with was prepared by the Coalition against Torture in Kyrgyzstan, an informal network of human rights organizations, which works to promote freedom from torture in Kyrgyzstan and unites: Association of NGO «Advocacy Centre for Human Rights», Public Funds «Accent», «Defender of Human Rights and Freedoms», «Kylym Shamy», «Child Right's Defenders League», «Legal Prosperity», «Ray of Solomon», «Positive Dialogue», «Legal Initiative Bishkek», «Centre for Support of International Protection », Public Associations «Jalal-Abad Human Rights Organization «Justice», «Social-Legal Centre «Spectrum», «Union of Unity», lawyer Ambarian Arsen and legal expert Nurakov Nuridin.

General coordination of the work on the preparation of the report was carried out by the Public Foundation «Legal Prosperity».

The report is submitted to the Committee against Torture as part of the review of the third report of the Kyrgyz Republic on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and is aimed at publicizing the most pressing issues relating to the observance of the rights enshrined in the Convention and at drawing the attention of the experts of the United Nations Committee against Torture to the most pressing problems in their implementation and compliance with the Convention.

In preparing the report, the Coalition against Torture was guided by the Committee's list of issues prior to the submission of the third periodic report of the Kyrgyz Republic. Each section of the alternative report was a response to a question posed by the Committee to Kyrgyzstan.

The report is based on the results of the Coalition's own activities. However, the data published by the State authorities and publications in the media were used in the preparation of the report.

The report was prepared and published with the financial support of the World Organization against Torture (OMCT)<sup>1</sup>.

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<sup>1</sup> «The activity was enabled with the financial assistance of the European Union, the Ministry of Foreign Affairs of the Netherlands, the Swiss Federal Department of Foreign Affairs and the Irish Department of Foreign Affairs. The contents of this document are the sole responsibility of OMCT and can under no circumstance be regarded as reflecting the positions of the European Union, the Ministry of Foreign Affairs of the Netherlands, the Swiss Federal Department of Foreign Affairs or Irish Aid».

## **LIST OF ABBREVIATIONS**

<b>SGLA</b>	State-guaranteed legal aid
<b>GKNB</b>	State National Security Committee
<b>IVS</b>	Temporary detention facility
<b>HRCttee</b>	UN Human Rights Committee
<b>MIA</b>	Ministry of the Interior Affairs
<b>NC</b>	National Centre for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OVD</b>	Internal Affairs department
<b>SIZO</b>	Pre-trial detention facility
<b>CC</b>	Criminal code
<b>CCP</b>	Code of criminal procedure
<b>CEC</b>	Criminal executive code

## SUMMARY

Since the submission of the second periodic report in November 2013, the Government and State bodies of the Kyrgyz Republic have taken certain steps to combat torture and impunity:

- The prohibition of the use of torture and cruel treatment is included in the provisions of the Constitution, bills and other laws and regulations of the Kyrgyz Republic, including those establishing the procedure for criminal proceedings in cases involving crimes and misdemeanours and in cases involving violations; As well as regulating the procedure and conditions of detention of persons suspected or accused of committing crimes, the procedure and conditions of stay in specialized educational, health and social welfare institutions;

- As part of the judicial-legal reform, new PC, CCP, CEC, Law «On the Bases of Amnesty and the Procedure for its Application» entered into force on 1 January 2019. The provisions of the new Codes and the Law limit the grounds for exemption from the serving of sentences (liability) of suspected (convicted) torturers on the grounds of the expiry of the statute of limitations and prevent the termination of criminal proceedings for allegations of torture in case of reconciliation between the parties; Release on parole from serving a sentence, apply amnesty to perpetrators of torture, prohibit the extradition of a person to a country where he or she is at risk of torture, as required by the Convention against Torture, and establish additional legal safeguards for the protection of the person, involved in criminal proceedings and is at risk of being subjected to torture<sup>2</sup>;

- In 2014, the Ministry of Health developed a practical guide on the effective documentation of violence, torture and ill-treatment for medical professionals in the Kyrgyz Republic, based on the principles of the Istanbul Protocol (hereinafter the Practical Guide) which has become a national document for use by health professionals at all levels of health care;

- Medical documentation of torture and ill-treatment, based on the principles of the Istanbul Protocol, is included in the curriculum of higher medical schools and in the training and professional development of medical personnel;

- Training materials on methods of investigating and prosecuting cases of torture are included in the training and development programs for investigators, prosecutors and judges, and regular training sessions are held on the basis of these materials;

- In 2016, a new law «On State Guaranteed Legal Aid» was adopted, which expanded the list of persons entitled to State-guaranteed free legal aid. Under the new law, qualified legal assistance is provided to all persons, without exceptions, in cases of detention, as well as to accused persons charged with particularly serious crimes, without regard to annual income;

- On 15 March 2019, for the first time in 29 years of independence, a Human Rights Action Plan was drawn up for the period 2019-2021. The Plan of Action devotes a separate section to the prevention of torture and ill-treatment. In accordance with subparagraph 2.3. the Government should develop and implement a special Plan of Action for the implementation of the Istanbul Protocol in Kyrgyzstan<sup>3</sup>.

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<sup>2</sup> The Law «On Introduction of Criminal Code, Code of Misdemeanours, Criminal Procedure Code, Criminal Executive Code and Law «On General Principles of Amnesty» of January 24, 2017 10; Law «On Bases of Amnesty and Procedure of its Application», Article 7.1 part.2.

<sup>3</sup> The Human Rights Action Plan 2019-2021 was approved by the Government of Kyrgyzstan on 15 March 2019.

Despite these positive developments, the practice of torture remains widespread, no one in Kyrgyzstan is completely safe from torture and everyone may become a victim of torture at any time. To some extent, the following causes and circumstances have contributed to this situation:

- The definition of «torture» in article 143 of the Criminal Code has not been brought into line with article 1 of the Convention against Torture, subjects of crime are limited only to state officials and does not provide for criminal liability for torture of other persons «acting in an official capacity»;

- The practice of prompt, impartial and full investigation of allegations of torture and ill-treatment has not been established;

- As a result of ineffectiveness of the investigation of numerous allegations of torture, the number of persons convicted and effectively punished for torture remains very low;

- Despite the fact that the first decision of the Human Rights Committee (HRCtee) concerning Kyrgyzstan took place 13 years ago<sup>4</sup>, an effective mechanism for the implementation of the decisions of international human rights bodies in the country was not established. The HRCtee views, including those in which violations of the right to freedom from torture and ill-treatment are established, remain unimplemented, and there is no official information on the measures taken by Kyrgyzstan to implement the HRCtee's views;

- The amount of compensation for moral damages awarded to persons found by the HRCtee to be in violation of the right to freedom from torture and ill-treatment does not meet the criteria of reasonableness and fairness;

- The situation regarding complaints of unlawful use of violence against persons deprived of their liberty is traditionally, acute. The main problem is the difficulty of verifying complaints and establishing evidence of possible human rights violations in such institutions;

- Quarantine measures under COVID-19 blocked the activities of the NC and the visits to the detention facilities were impossible, though the increased risk of ill-treatment of detainees due to introduced public health measures, in response to the epidemic;

- On 11 April 2021, a new Constitution was adopted, which established a rigid chain of power, broadening the President's powers, excluding checks and balances;

- On 22 July 2021, the Parliament adopted a new CPC, CC and Code of Offences against Administrative Procedure. Codes do not embody the concept of national modernization, nor do they seek to improve the standards of human rights protection that have already been achieved, but, on the contrary, they lead to the deterioration and return of old ineffective practices. The new codes were to enter into force on 1 September 2021, but with the President's objection was returned to Parliament;

- The continued campaign of representatives of the Kyrgyz authorities and their supporters aimed at discrediting civil society organizations and activists, who often expose corruption by high-ranking officials and demand respect for the rule of law;

- New legislative initiatives that may limit the ability of human rights defenders to carry out their human rights activities were introduced. This legislation will also directly affect the sphere of activity of the member organisations of the Coalition against Torture in Kyrgyzstan, cases of intimidation and attacks against human rights defenders and lawyers defending the interests of victims of torture have been documented;

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<sup>4</sup> Umetaliev v. Kyrgyzstan, CCPR/C/94/D/1275/2004, 30 October 2008.

- The Kyrgyz Republic has not made the declaration under article 22 of the Convention against Torture.

These and other trends related to implementation of the Convention against Torture in Kyrgyzstan, as well as recommendations for improving the situation, are highlighted in this alternative report. The alternative report will be useful to the experts of the Committee for and during the constructive dialogue between the Committee and the Government of the Kyrgyz Republic.

## **1. IMPLEMENTATION OF THE COMMITTEE'S DECISIONS (article 2)**

In the Concluding Observations on the Second Periodic Report of Kyrgyzstan (paragraph 22 b)), the Committee regretted that the State had failed to implement the views of the Human Rights Committee in a number of cases of torture and ill-treatment, despite article 41, paragraph 2, of the Constitution, providing for reparation in case of a finding of a violation by an international body.

Since the submission of the Second Periodic Report, there have been no significant changes in the effective implementation of the HRCtee's views in the country. The HRCtee's views remain unimplemented. There is no official information on measures taken by Kyrgyzstan to implement the Human Rights Committee's views.

### **Recommendations:**

1. To publish official information on the measures taken by the Government of the Kyrgyz Republic to implement the decisions of the Human Rights Committee, including on which violations of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment by Kyrgyzstan have been found .

2. To guarantee the review in the light of new circumstances of all criminal cases in which regard the Human Rights Committee, in its views, has found a violation by the Kyrgyz Republic of human rights and freedoms, including the right to freedom from torture, and to ensure that victims of torture have their rights restored and receive decent compensation.

3. Make the declaration under article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention.

## **2. DEFINITION OF TORTURE AND PUNISHMENT COMMENSURATE WITH THE GRAVITY OF THE OFFENCE (ARTICLES 1 AND 4)**

In its concluding observations on the second periodic report of Kyrgyzstan (paragraph 10), the Committee noted that the definition of torture in the Criminal Code limits criminal responsibility to public officials, excluding other persons acting in an official capacity, and recommended that Kyrgyzstan brings its legislation into line with the Convention by, inter alia, ensuring that the definition of torture in the CC covers all elements contained in article 1 of the Convention.

The recommendation has not been implemented. The definition of «torture» both in the current Criminal Code and in the new Criminal Code adopted by Parliament is not fully in line with article 1 of the Convention, as the subjects of crime are limited only to state officials and does not provide for criminal liability for torture of other persons *«acting in an official capacity»*.

### **Recommendation:**



1. Amend the article 143 of the Criminal Code (torture) and expand the scope of subjects of crime by providing for criminal liability for the use of torture not only by officials, but also by «other persons acting in an official capacity».

### **3. FUNDAMENTAL LEGAL SAFEGUARDS OF PERSONS DEPRIVED OF LIBERTY AND DETAINEES (articles 2 and 11)**

The national legislation of the Kyrgyz Republic provides guarantees and safeguards for the observance of rights, including freedom from torture, for persons, which have been considerably strengthened by judicial and legal reform of the new Code of Criminal Procedure, which entered into force on 1 January 2019.

However, legislative procedural guarantees and safeguards for the rights of detained suspects are still insufficient, which contribute in one way or another to the practice of violation of pre-trial procedural rights and widespread use of torture.

#### **3.1. Problem of timely registration of detention and respect of the rights of detainees**

Existing gaps in current legislation do not clearly regulate the procedure of detention in terms of the obligation of law enforcement authorities to register the first contact with the detainee as the moment of arrest. In article 5 of the Code of Criminal Procedure, the term «detention» is understood to mean a measure of procedural coercion, the essence of which is deprivation of the suspect's liberty for up to forty-eight hours - until the court decision. There are no notions of «detained», «moment of detention». This allows the law enforcement authority to abuse its authority and not properly register the detention of a person<sup>5</sup>.

Practice has shown that during this period of time, that is, during the first hours following detention before being held in a temporary detention facility (IVS), which may last indefinitely, that the most significant human rights violations, including torture, take place.

Article 45, part 1, paragraph 2 of the Code of Criminal Procedure establishes the right of a suspect to one free and controlled telephone conversation. There are risks of abuse by investigators in exercising this right, as the procedure is not regulated. In practice, the investigator usually gives the detainee such opportunity. But this usually happens after a long time, usually several hours after the moment of detention.

#### **3.2. Challenging the legality of arrest or detention**

The right to liberty and security of person is a constitutional human right. Under article 59, part 4, of the Constitution, every detainee must be brought before a court immediately before the expiry of 48 hours from the moment of detention in order to decide on the lawfulness and

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<sup>5</sup> Analytical paper «Problems of enforcement of guarantees against torture and ill-treatment». Nuridin Nurakov, member of the Coalition against Torture in Kyrgyzstan.

validity of his detention. A person has the right to challenge the legality of his detention. Article 45, part 1, paragraph 11 of the Code of Criminal Procedure establishes the right of a detainee to request verification of the lawfulness and validity of the detention.

It is the responsibility of the prosecution to verify the legality of the detention. The examining magistrate verifies the legality of detention at the same time as examining the prosecutor's request for a measure of restraint. This review is carried out only once at the request of the prosecution for the duration of the pre-trial proceedings. The period of judicial control is not from the moment of actual restriction of liberty, but from the moment of the arrest to the moment of the application to the court for a measure of restraint. Moreover, the court does not consider whether allegations are well founded, that makes the constitutional guarantee meaningless. In this way a person deprived of liberty does not have the procedural possibility to make an independent application to a court to challenge the lawfulness of the arrest or detention in any situation and at any time. It is difficult to imagine a situation where the prosecution admits in court that the detention was illegal.

Practice demonstrates that detention may have been procedurally lawful at the time of the actual restriction of liberty, but after expiry of time, such detention may become unlawful because of changed circumstances, failure to prove the allegations, illness of the suspect, etc. For example, under quarantine in connection with COVID-19, detention periods have expired and have been extended without any assessment of the situation of the suspect and the accused, although the constitutional guarantee applies to all detainees<sup>6</sup>.

### **3.3. Problem of exceeding the time limits established by law**

According to Article 9 of the Law «On the Procedure and Conditions of Detention of Persons Suspected and Accused of Committing Crimes» temporary detention facilities (IVS) of the Ministry of Internal Affairs serves exclusively for the detention of persons detained on suspicion of committing a crime before the court decision on measure of restraint.

As part of the monitoring of the temporary detention facilities (IVS OVD) in Jalal-Abad province, more than 400 cases were identified in which the suspects, after the court decided a measure of restraint in the form of detention, were not transferred to the pre-trial detention center (SIZO) and were illegally detained in the IVS. The heads of local police departments (OVD) and the administration of IVS explain the delay in the transfer by the absence SIZO in Jalal-Abad province, which means that accused persons from the IVS of the Jalal-Abad region have to be transferred to SIZO-5 in Osh (115 km); and by the lack of human and material resources (convoy, special transport, fuel and lubricants, etc.). However, these arguments cannot and should not justify a gross violation of the law, which is manifest and may cause substantial harm to the rights and interests of persons detained in the temporary holding facilities.

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<sup>6</sup> Analytical paper «Analysis of some provisions of the draft amendments and additions to the Criminal Procedure Code of the Kyrgyz Republic». Arsen Ambarian, member of the Coalition against Torture in Kyrgyzstan.

The prolonged detention of a person in the conditions observed in the IVS of Kyrgyzstan amounts to cruel, inhuman and degrading treatment. The law does not establish a time limit for detention for the entire duration of the judicial proceedings.

### **3.4. Measures guaranteeing detainees access to qualified legal assistance and its implementation in practice**

In accordance with article 50, paragraph 2, of the Code of Criminal Procedure, defence counsel shall participate in the case from the moment of the actual arrest of the suspect or notification of the suspicion of the commission of an offence and (or) of the suspect's misconduct<sup>7</sup>. In practice, it has been observed that the requirements for a lawyer to take part in a case from the moment of actual arrest are not met by the investigators.

Example: *On 22 May 2020, during a preventive visit to Establishment 14 of the State Penal Correction Service, 16-year-old O.A. addressed the staff of the National Centre for the Prevention of Torture with a statement that, in 2019, she had been detained by officers of the Pervomay District of Police Department (OVD) of Bishkek, and on the same day, she was interrogated without a lawyer or legal representative. She was subjected to torture, was hit two to three times, received psychological pressure and insulted.*

Article 51, paragraph 4 of the Code of Criminal Procedure stipulates that, in cases where the participation of a defence counsel chosen by a suspect or accused person is not possible, the authorized official of the body conducting the initial investigation, the investigator or the court must provide a lawyer through the State Register of Lawyers under the Code of Criminal Procedure. The procedure for granting is determined by the Law «On State Guaranteed Legal Aid» of December 16, 2016.

Unfortunately, the practice of providing legal aid under the State Guaranteed Legal Aid has certain shortcomings, so «state-appointed» lawyers do not always ensure the quality and independence of the defence. An analysis of the existing practice revealed the following:

- There is not sufficient number of lawyers in the State Guaranteed Legal Aid roster, especially in the regions of the country;
- The SGLA coordinators provide monthly lists of lawyers' duty to investigative bodies, courts, but there are systemic problems in their implementation already at the stage of the lawyers' interaction with the case;
- There is an uneven distribution of cases among lawyers in the work of the SGLA Coordination Centre. Thus, the workload of counsel who are more frequently called upon is significantly increased. This not only limits the choice of detainees, but also calls into question the quality of legal assistance they provide during the pre-trial phase of criminal proceedings;

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<sup>7</sup> CCP KR, article 51 part 4,5.

- The lawyers interviewed do not rule out the existence of a corruption component in the system of case management on the part of investigators. This proves once again that there is still a steady tendency for investigative bodies to invite the lawyers they know directly regardless of the schedule;

- Lack of monitoring mechanisms for compliance of investigators with lawyers' duty schedules, gives rise to such phenomenon as a «pocket» lawyer whose formal activities give officials some confidence in impunity for acts of torture and other unlawful methods of investigation and investigation;

- The dependence of individual lawyers on judges, the police and the Public Prosecutor's Office often forces them to maneuver between the interests of the client and the desire to maintain good relations with judges, law enforcement officers who decide the case;

- To date, there are no good tools and effective mechanisms in the SGLA system for external and internal quality control of qualified legal aid provided under the SGLA system<sup>8</sup>. Restrictions on the provision of timely legal assistance to detainees are a very serious problem. The insufficient number of rooms in IVSs and SIZOs for lawyers to meet with clients has created long waiting lists for lawyers to meet the defendant in custody. At present, during the pandemic period, lawyers do not communicate with the defendant in a separate room, lawyers work with their clients in a visiting room, through a glass partition, by telephone, which is monitored by the relevant services of the institution, where the defendant is being held.

Contrary to the established international standards, Order of the Minister of the Interior of 24 April 2020 No 300, lawyer are prohibited from using mobile recording devices in investigative buildings, the ban on the use of recorders to record conversations with an arrested defendant, the use of which for the purpose of providing qualified legal assistance has long been standard in the professional activity of a lawyer.

### ***Restrictions on detainees' access to high-quality legal assistance during the COVID-19 pandemic***

During the state of emergency declared in the capital and in some parts of the country from 25 March to 10 May 2020, a strict regime of movement was imposed based on the special permits issued by the city's commandant. The absurdity of the situation was that it was only possible to obtain a special pass for visiting the buildings of the territorial commands, which, because of their remoteness, were physically inaccessible to lawyers. In this way, the commandants prevented citizens and lawyers from obtaining and providing qualified legal assistance, as guaranteed by the Constitution.

The absence of a mechanism for inter-agency cooperation during the pandemic, including the decongestion of the prison system, and the suspension of all judicial proceedings during the pandemic until July 2020, resulted in massive violations of the rights of detainees to legal assistance, assistance from a lawyer, fair trial.

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<sup>8</sup> Analysis of the situation on granting access of citizens to UTC, conducted by ANPO «Advocacy Centre for Human Rights», member of Coalition against Torture.

Despite numerous appeals by national human rights institutions and civil society to guarantee the constitutional right of everyone to legal assistance, as well as complaints of illegal actions by officials of institutions based on internal orders of the State Penal Correction Service, during the epidemic, lawyers were unable to gain access to their clients held in pre-trial detention centers (SIZOs).

The requirement for a negative COVID-19 PCR test by lawyers and human rights officers is overstated and not justified. Thus, the results of the PCR test are released after a few days, the validity period of the certificate being two weeks. During this period, the visitor may become infected. In addition to providing a negative PCR test result, lawyers were provided with the terms of purchase and access to the defendant in a special protective suit in which neither speaking nor recording was possible. At the same time, such strict measures did not apply to the employees of the closed institution who came to work in the morning and left in the evening.

Numerous violations of procedural deadlines and of the procedure and order for considering changing or extending a preventive measure in the form of detention have been documented. The procedure for conducting court hearings online in Bishkek SIZO - is organized in such a way that lawyers are effectively unable to communicate with their clients under conditions of confidentiality, since the defendants are in the same room as the staff of the institution<sup>9</sup>.

The decision of the Commandant and the Administration of Closed Institutions to restrict the activities of the lawyer was unlawful. The Commandant or head of an institution may not revoke, by a decision, guarantees of respect for human rights and freedoms, including legal protection established by the Constitution. The State of Emergency Act itself also does not permit the suspension of lawyers' activities in the territory where a state of emergency has been declared. The competent authorities should conduct a legal assessment of the actions of the heads of the security forces and the State Penal Correction Service.

### **3.5. Medical examination at arrest**

Article 45, paragraph 6, of the Code of Criminal Procedure requires a mandatory medical examination of a person detained on suspicion of having committed a crime. In accordance with this rule, medical examination accompanied by a relevant document is mandatory whenever a detainee is brought to the IVS, and whenever he or she, his or her defence counsel, close relatives or spouse submits a complaint about the use of violence against him or her, or about torture or ill-treatment by state officials. The medical examination is the responsibility of the IVS administration.

The monitoring of temporary detention facilities (IVS) conducted by the National Centre for

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<sup>9</sup> «Respect for human rights and infection safety in closed institutions during the COVID-19 epidemic», p. 44. <http://npm.kg/ru/news/proshla-rabochaya-vstrecha-po-itogam-issledovaniya-soblyudenie-prav-cheloveka-i-voprosy-infektsionnoj-bezopasnosti-v-zakrytyh-uchrezhdeniyah-kyrgyzskoj-respubliki-v-usloviyah-epidemii-covid-19/>

the Prevention of Torture and the Akyikatchy Office (Ombudsman) has demonstrated that 93 per cent of detainees are subject to compulsory examination, of whom 92 per cent are examined at the moment when they are into IVS and the rest is within 24 hours. Although rarely, but some detainees have been unable to respond, because long time passed since they were in detention.

The serious problem is the fact that approximately 11 per cent of the examinations are conducted by a staff member of the temporary detention facilities. That gives rise to the question whether such examination achieves its objectives, since the staff member of the temporary detention facilities, who does not have even the minimum medical knowledge, is incapable of properly conducting the medical examination and properly assess the physical and mental condition of the patient, the need for treatment.

The problem of timely, comprehensive and high-quality medical examinations of persons held in temporary detention facilities is directly related to the lack of permanent medical staff in such facilities. According to the monitoring, the confidentiality requirement for medical examinations is not observed in every third case.

There are cases where medical personnel do not properly describe injuries detected or do not record them at all.

*Example: On 19 June 2019, K.M. was arrested by the Ministry of Internal Affairs of Karakol, according to a complaint of domestic violence, and was taken to the municipal internal affairs office building, where he was punched and kicked in all parts of his body in this office. At medical emergency department, where K.M. was taken for a medical examination on the same day, an examination report was drawn up, in which it was noted that there were no injuries on the body of the detainee. On 22 June 2019, during a preventive visit by the NC officers, at K.M.'s body there were signs of multiple abrasions and bruises. On the same day, a complaint was sent to the Prosecutor's Office, which was registered with the Unified Register of Crime and Misconduct under article 143 of the Criminal Code<sup>10</sup>.*

Every year the NC, the Akyikatchy (Ombudsman) and the Coalition against Torture, send to the government and the competent State bodies the recommendations concerning the proper medical examination of persons placed in temporary detention facilities and the provision of high-quality medical care. However, they have not been properly implemented, and some measures taken have not had the planned effect in addressing the identified systemic violations.

### **3.6. Problems of medical documentation of torture in accordance with the principles of the Istanbul Protocol**

The Coalition against Torture and the NC have documented cases in which medical personnel

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<sup>10</sup> NC Annual Report 2019, p. 43.

fail to comply with the requirements of the Ministry of Health Order on the implementation of the Practical Guide for the effective documentation of violence, torture and other cruel, inhuman and degrading treatment and punishment<sup>11</sup> and do not perform a medical examination in accordance with the Istanbul Protocol, do not fill in the special Medical Examination Form (003-3/y) developed for medical documentation of the consequences of torture, do not inform the law enforcement bodies authorized to investigate such cases of alleged torture.

Example: *On 13 January 2020, Japarov Maksat was beaten by officers of the Lenin district police station of Bishkek. Ambulance was called in to provide medical assistance to him. However, despite the statement by Zhaparov Maksat that he had been subjected to violence by officials of the internal affairs agencies, the ambulance doctor did not produce the medical form 003-3/ which, according to the order of the Ministry of Health, he was obliged to draw up (criminal case 02-828-2020-000014).*

Example: *On March 12, 2020, Jakipov Aybek was beaten by officers of the GKNB of Issyk-Kul Oblast in the building in Karakol. The doctor of ambulance services who arrived on call, ignoring Jakipov Aybek's statement that he had been beaten by SNSC officials, did not fill in the medical Form 003-3/ which according to the Order of the Ministry of Health, she was obliged to make up (criminal case 03-153-2020-0017).*

The experience of the Ministry of Health in implementing the Practical Guide shows that the introduction of medical documentation exclusively within the Ministry's system is insufficient and requires its introduction into the practice of departmental health organizations and private organizations.

Third periodic report of the Government (paragraph 262) declares that measures are under way to standardize and standardize the medical documentation of torture and ill-treatment in all health facilities, regardless of departmental subordination or form of ownership.

It should be noted that aiming to achieve purpose of harmonizing and standardizing medical documentation of torture and ill-treatment, the Ministry of Health has developed «Rules on Medical Documentation of Violence, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment» (hereinafter - the Rules) and a special Action Plan on Implementation of the Principles of the Istanbul Protocol (hereinafter - the Action Plan) which were referred to the Government for approval in January 2021.

There is currently no official information on measures taken by the Government to adopt and implement the Rules and Action Plan.

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<sup>11</sup> The document is based on the principles of the Istanbul Protocol and approved by order of the Ministry of Health of the Kyrgyz Republic on 9 December 2014 No. 649. The Order of the Ministry of Health of the Kyrgyz Republic of 7 December 2015 approved the second edition of the Practical Guide for the effective documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment.

### 3.7. Human rights violations during the COVID-19 pandemic

The results of the Coalition against Torture monitoring and studies conducted by national human rights institutions have revealed violations in preventing the risk of the spread of coronavirus infection in places of detention, access of detainees to medical care and medical treatment during pandemic.

Due to the refusal of the SIZO to further transport prisoners without a negative test on COVID-19, the overcrowding of the «quarantine cells» of the SIZO, the suspects were kept in IVSs that meant to be for short stay only, from two weeks to two months. That is a violation of the legally established procedure of detention.

Human rights defenders identified two confirmed cases of coronavirus infection of the heads of the IVS, in one case of a head himself, and members of the head's family – in the other. In both cases, despite the fact that both officers in question had long been in contact with their subordinates and with the suspects and accused persons held in the IVS, neither measures for sanitary treatment of the premises, nor screening of all of these persons for contamination were taken until this was requested by the monitoring group<sup>12</sup>.

Summary of the results and conclusions of the study on the observance of human rights during the COVID-19 pandemic, including the right to medical care, and the provision of infectious safety in State Penal Correction Service SIZOs, showed that no element of the infectious safety system is 100% implemented. This leads to lack of sanitary safety and the risk of COVID-19 dissemination among prisoners and staff of places of detention and restriction of liberty<sup>13</sup>.

Compulsory vaccination of persons performing compulsory military service in military units was carried out without prior examination of the state of health and assessment of possible side effects, as well as samples of vaccines. Soldiers of the military unit in the village of Ala Buka in the Jalal-Abad region who got a vaccine against COVID-19 AstraZeneca suffered from side effects on 5 August 2021. Four out of 90 vaccinated patients had side effects with different clinical symptoms: hyperthermia above 39C, severe headache. Forty soldiers had sub-febrile temperatures<sup>14</sup>.

#### **Recommendations:**

1. Adopt legislative and any other measures necessary to eliminate problems of timely registration of detentions and respect for the rights of detainees;
2. Provide for the procedural right of an investigating judge to instruct a participating prosecutor to conduct an appropriate review of a suspect's or defendant's claim of torture.

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<sup>12</sup> <https://notorture.kg/?p=3842>

<sup>13</sup> «Respect for human rights and infectious safety in closed institutions during the COVID-19 epidemic», pp. 44.

<sup>14</sup> <https://rus.azattyk.org/a/31396745.html>



3. Eliminate the practice of mass illegal detention of persons in temporary detention facilities (IVS) of the internal affairs agencies of the Jalalabad region and other regions of the Kyrgyz Republic due to delays in their transfer to SIZOs.

4. Reform the system of State-guaranteed legal aid to eliminate any corruption in the system of case management by investigators and use of «pocket» lawyers; to ensure the full independence of lawyers from investigative bodies and the quality of legal defence, and change the rules regarding payment and tariffs;

5. Address infrastructural and organizational issues that prevent lawyer from providing qualified legal assistance in accordance with professional standards, in particular the use of mobile recording devices in government buildings and allow usage of tape-recorders to record interviews with the arrested defendant.

6. Eliminate the practice of unduly obstructing citizens and lawyers from receiving or providing qualified legal assistance that is guaranteed by the State in times of emergency.

7. Ensure that each temporary detention facility is provided with independent medical personnel (doctors), who are available all the time for a full medical examination of new arrivals. In addition, training has been provided on appropriate methods of medical examination to detect signs of torture and other forms of ill-treatment.

8. Approve by decree of the Government of the Kyrgyz Republic the Rules for Medical Documentation of Torture and the Plan of Action for Implementation of the Principles of the Istanbul Protocol. The aim is to unify and standardize medical documentation of torture and ill-treatment in all health-care facilities, regardless of their hierarchy or form of ownership.

9. Ensure full implementation of all components of the Infectious Safety System to prevent the risk of COVID-19 spread among the prison population and staff.

#### **4. NATIONAL HUMAN RIGHTS INSTITUTIONS (article 2)**

##### **4.1. Akyikatchy (Ombudsman)**

The institution of the Ombudsman (Akyikatchy) of the Kyrgyz Republic has not been brought into line with the Paris Principles, despite the Committee's concluding observations (paragraph 14).

In accordance with article 7 of the Law «On the Ombudsman (Akyikatchy) of the Kyrgyz Republic», the Ombudsman may still be removed from office early in the event of the Parliament's disapproval of his/her annual report on the observance of human rights and freedoms, and shortcomings in legislation on the protection of human and civil rights and freedoms. This provision creates a direct link between the Ombudsman and the political forces and prevents him/her from effectively performing his/her function of protecting human rights.

In the third periodic report (paragraph 100), the Government states that a new draft law «On Akyikatchy (Ombudsman) of the Kyrgyz Republic» has been drafted and is under consideration in Parliament, which amends the procedure for the election and dismissal of the Ombudsman (Akyikatchy), its legal status, powers, organization of activities.

It should be noted that on 20 April 2017, the Bill was considered and adopted in only the first

of three mandatory readings and has been in Parliament for more than three years without any movements that constitute obstacles to the effective and independent exercise of the mandate by the country's main human rights defender.

#### **4.2. National preventive mechanism**

Despite the general efforts of the Kyrgyz authorities to promote the establishment and development of the NC, there are still reasons and conditions that impede its effective functioning and the fulfilment of its mandate.

##### ***Prevention of NC activities***

In the period of 2014 - 2020, 56 cases of unlawful interference to the activities of the NC by staff of places of deprivation of liberty and restriction of liberty were documented. The most frequent interferences to the work of NC were performed by the officials of the internal affairs agencies – 23 cases (41 per cent), the State Penal Correction Service 20 cases (36 per cent) and the National Security Committee - 7 cases (13 per cent).

In its third periodic report (paragraph 106), the Government of the Kyrgyz Republic declares that a special provision, article 146, has been introduced for the effective functioning and exercise of the powers of the NC, which punishes interference in any way into the activities of members of the Coordinating Council, officers of the NC.

However, the report does not mention that, despite the objections of the NC and the human rights organizations, article 146-2 was deleted from the existing CC, which entered into force on 1 January 2019. Against the background of continuing attempts to obstruct the work of the NC, such legislative changes weaken the guarantees of the independence of the NPM.

##### ***Obstacles to the effective implementation of the mandate due to underfunding***

In its concluding observations on the second periodic report (paragraph 15), the Committee recommended that Kyrgyzstan ensure that the NC has adequate financial, human and material resources to fulfil its mandate independently and effectively.

Contrary to the Committee's recommendation, in November 2019 and June 2020, the NC's budget was reduced by 780,000 soms (over USD 9,000) in May 2020. The resulting financial problems create obstacles for the NC to carry out monitoring visits to places of deprivation of liberty and to respond promptly to allegations of torture in closed institutions.

##### ***Impediments to effective mandate implementation due to lack of human resources***

The territorial offices of NC in the Naryn, Talas and Batken regions each have one staff member. This creates certain difficulties in the practice of carrying out monitoring visits to places of detention and confinement in these areas, since the law requires that the visits be carried out by groups of at least two persons.

### ***Obstacles to effective mandate execution in connection with COVID-19***

The sanitary and epidemiological requirements imposed by the Ministry of Internal Affairs and the State Penal Correction Service in connection with the pandemic allowed to carry out preventive visits to closed institutions under the condition that NC staff has negative PCR tests' results, to be updated every two weeks, and personal sanitary protective items, including protective suits, disposable masks, gloves, hospital booties and sanitizers. The budget of the NC does not include funds for the regular procurement of personal protective items. The lack of possibility to procure personal protective items and to pass the PCR tests remains an obstacle to the effective performance of the NC in its tasks aimed at preventing torture and ill-treatment in places of detention and restriction of liberty<sup>15</sup>.

### ***Blocking of the work of NCPTs during the state of emergency***

During the period from 25 March to 10 May 2020, when a state of emergency was declared in the capital and some regions of Kyrgyzstan, the National Centre of Prevention of Torture access to Bishkek IVS and the Bishkek SIZO-1 were restricted. This was due to the fact that the Bishkek City Governor refused to issue special permits for NC staff to travel throughout the city during the state of emergency, effectively preventing them from reaching the premises.

#### **Recommendations:**

1. Adopt a new law on Akyikatchy (Ombudsman) of the Kyrgyz Republic and bring the institution of the Ombudsman into line with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).
2. To ensure that any obstruction or interference in the work of the National Centre for Prevention of Torture is effectively investigated, and that those responsible are brought to justice and that the necessary measures are taken to prevent further violations.
3. To ensure that the NC can effectively carry out its mandate by removing existing obstacles related to underfunding, lack of human resources and illegal restrictions in the context of emergencies.
4. Ensure that the legislation regulating state of emergency have the guarantees for national human rights institutions to fulfil their mandate unhindered.

## **5. EFFECTIVE AND INDEPENDENT INVESTIGATION OF TORTURE (ARTICLES 12 AND 13)**

In its concluding observations on the second periodic report (paragraph 6), the Committee recommended that Kyrgyzstan take immediate and effective measures to prevent torture and ill-treatment throughout the country, including by implementing policies, that would eliminate impunity for perpetrators of torture and ill-treatment and ensure prompt, impartial, effective

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<sup>15</sup> «Respect for human rights and infectious safety in closed institutions during the COVID-19 epidemic», p 44.

investigations into all allegations of torture and ill-treatment, prosecution of those responsible, and the imposition of appropriate sentences on those convicted.

These recommendations of the Committee have not been implemented by the State and the problems of ineffective investigation of allegations of torture and ill-treatment, prosecution of perpetrators of torture and impunity remain acute.

According to official data of the Office of the Prosecutor-General, 2108 complaints on torture were registered by the prosecutorial authorities between 2014 and 2020.

Period	2014	2015	2016	2017	2018	2019	2020
Number of registered complaints	220	199	435	418	377	366	93

The downward trend in the number of complaints by victims of torture to the prosecutorial authorities is partly explained by lack of trust that the allegations of torture will be examined promptly and objectively; and the perpetrators of torture will be duly punished.

### **5.1. Impunity**

According to official data of the General Prosecutor's Office of the Kyrgyz Republic for the period from 2013 to 2017, 54 criminal cases were brought to court on charges of 108 persons for the crime of «torture». Of these, only 12 (11 per cent) were convicted and sentenced to 7 to 11 years' imprisonment.

In 2019, the court heard 7 criminal cases against 26 persons for torture. Only 2 (8 per cent) were convicted and sentenced to 8 years imprisonment. However, this sentence was also amended by a higher court, which reclassified the actions of the defendants from torture to abuse of authority (article 305, part 1, of the Criminal Code, which has become obsolete) and exempted all defendants from punishment on the grounds that the statute of limitations had expired. Thus, out of 26 defendants charged with torture, no one was actually punished.

Despite numerous allegations of torture, the number of persons convicted and effectively punished for torture remains low, few are prosecuted.

### **5.2. Ineffective investigations**

In accordance with the provisions of article 153, part 2, of the new Code of Criminal Procedure, which entered into force on 1 January 2019 powers to investigate cases of torture were transferred from investigators of prosecutorial authorities to investigators of the State

National Security Committee. This has resulted in a significant reduction in the effectiveness of the investigation.

The main reasons for the reduction of efficiency are:

***1) The investigative units of the State National Security Committee are not able to ensure the proper investigation of a case of torture because:***

- The lack of specially trained personnel in the investigative units of the State National Security Committee with special knowledge and experience in the investigation of torture, which have been developed over years by investigators of the prosecutorial authorities previously empowered to investigate this category of cases;
- There is no specialization of criminal investigators in cases of torture. Investigators are not provided with regular training regarding torture investigation;
- There is no inter-departmental control within SNSC over the investigation of criminal cases of torture. Criminal cases rarely have instructions from the heads of investigative units;
- Prosecutors supervising the investigation of criminal cases involving acts of torture poorly perform their functions.

*Example: The criminal case of 150-18-60 regarding torture of Rajapova Nargiza has been investigated for more than two and a half years. The case was repeatedly suspended and terminated by investigators from the State National Security Committee in Osh and the Osh region. These decisions of the investigators have been repeatedly declared illegal and revoked, but not by the local prosecutors directly supervising the investigation, but by the higher Prosecutor's Office or the court.*

Owing to the specific character of the State National Security Committee as a closed institution, lawyers often have difficulty to physically access their premises to meet the investigator in charge of the criminal case, and exercise their procedural rights for the protection of a victim of torture.

***2) Issues regarding the definition of torture in criminal legislation***

Due to misunderstanding and misinterpretation of the constituent elements of the crime of «torture», and in some cases due to self-serving or other personal interest, investigators, prosecutors and judges classify the obvious facts of torture under article 321 of the Criminal Code as abuse of power, rather than under article 143 of the Criminal Code (torture). Often this allows the torturers to avoid real punishment, since the crime of «abuse of power» provides for a more lenient punishment, and those convicted for abuse of power, unlike those convicted for torture, are entitled to amnesties, released on probation or parole.

*Example: The Military Prosecutor's Office of the Bishkek garrison accused servicemen of military unit 73809 of the Ground Forces of the Armed Forces of the Kyrgyz*

*Republic, Senior Lieutenant Kazybek Uztarbek, Ensign Zhaparov Zhumakmat, Petty Officer Orozbayev Ulanbek, in forcing conscripts Ismailov Darkhan, Borayko Alexander and Dombaev Sultangazy to do household work for private individuals, for which they themselves received a reward of 500 soms per hour. When the soldiers refused to work, Senior Lieutenant Kazybek Uulu Zattarbek, Ensign Zhaparov and Petty Officer Orozbaev beat them, hitting them on the head with their palms, a rifle and a machine gun (part of the weapon, a thin metal bar intended for cleaning) on different parts of the body.*

*Despite the fact that the actions of Kazybek uulu Zattarbek, Zhaparov Zhumakmat and Orozbaev Ulanbek are seen as a constituent of the crime «torture», the investigator qualified them as abuse of official powers. The Alamedin District Court found officers guilty of abuse of power and sentenced them to three years' imprisonment. On 4 July 2019, the Chui Regional Court overturned the decision of the Alamedin District Court and substituted the punishment with probation supervision.*

### **3) Red tape in criminal investigations**

Article 155 of the Code of Criminal Procedure defines the time limit for the investigation of criminal cases and stipulates that the investigation of a case must be completed within two months from the date of notification of a suspect about his/her status.

According to the lawyers, this anchoring of the commencement of the pre-trial investigation to the time of notification of the suspect is the most serious shortcoming of the new CPC at the pre-trial stage. The reason for that is that prior to notifying a person of a suspicion, the investigator is not subject to any time limits. The previous Code of Criminal Procedure established such limits and disciplinary sanctions for their violations. Thus, at the pre-trial investigation, prior to notification of suspicion, the intensity of the investigation of the case is left at the discretion of the investigator. As a result, many cases in which a person has not yet been notified of the suspicion are not dealt with by investigators, which creates red tape.

**Example:** *On November 8, 2018, four officers of the Kyzyl-Zhar local Police Department of Jalal-Abad Oblast used torture against Davlatov Almaz to force him to confess to committing cattle theft. Almaz was kicked on the inside of the thigh and on the front and side of the abdomen. One of the employees kicked him in the genitals. Almaz was then stripped of his clothes and forced to stand in front of an open window when the temperature outside was minus 2 degrees Celsius. The torture lasted over three hours. The investigation of the complaint has been ongoing for more than two and a half years, but no effective measures have been taken to identify and prosecute the perpetrators of torture.*

### **5.3. Practice of violation of the procedural legislation**

An analysis of the established practice of pre-trial proceedings has made it possible to identify the most serious violations of criminal procedural law committed during the investigation of allegations of torture:

- Failure to ensure the timely registration of complaints and allegations of torture, and unjustified refusal to register such allegations officially;

Example: *On 17 September 2019, Aykut Konushbaeva was beaten by a police officer at a peaceful assembly that took place outside the parliament building. On 19 September 2019 she filed an application for bodily injury by a police officer of the Central Police Department of Bishkek. The application was accepted and sent to the Prosecutor's Office of Bishkek. An official of the Prosecutor's Office registered the application only on the fifth day after the complaint submission, for five days, a citizen could not obtain a decision to undergo an examination and record injuries.*

Example: *On 26 July 2014, Bakyt Kutukeev filed a complaint about torture against him by officers of the Oktyabr District of Bishkek and the Central Administrative Department of the Ministry of Internal Affairs of the Kyrgyz Republic to the Prosecutor's Office of the Oktyabr District of Bishkek. The application was not duly registered. Kutukeev was not informed about the decision on the application. In the criminal proceedings against Kutukeev B. for committing fraudulent acts, he also claimed to have been tortured. However, the courts ignored his claims. After the lawyer's request to the Prosecutor's Office of the Oktyabr District of Bishkek on 1 February 2019, the material and the decision could not be found. On 26 August 2019, Kutukeev filed a new complaint of torture with the Prosecutor's Office of the Oktyabrsk district of Bishkek. It was only after the application was submitted to the judicial authorities by Kutukeev B. his complain was registered in the Unified Register of Crime and Misconduct on October 9, 2019 (No 03-155-2019-000066). The investigation was assigned to an investigator of the State National Security Committee in Bishkek, who has so far not conducted any investigative action regarding Kutukeev B.*

- Systematic issuance of unlawful procedural decisions (suspension, termination of criminal proceedings, refusal of a request by the victim and his defence counsel), which is a violation of the victim's constitutional right to access to justice. In the vast majority of cases, this is due to incomplete investigations and failure to carry out all possible and necessary investigations that lead to the subsequent illegality of procedural decisions. Often, however, the new decision following a further inspection or investigation is textually the same as the previous one, without new information, new findings and evidence of a virtually non-existent investigator's work during additional verification or investigation.

Example: *In the criminal case regarding torture of Ahmed Isaev (URCM 03-151-2019-000144 of 17 October 2019) by police officers of the Special Regiment of the Ministry of Internal Affairs the lawyer presented to the investigator of the investigation department of the State National Security Committee headquarters in Bishkek explanatory witnesses, photographs showing signs of beatings, and repeatedly requested forensic examinations and questioning of police officers, but the investigator ignored the requests. Based on the lawyer's complaint, the*

*investigating judge of the Pervomay District Court in Bishkek ruled that the investigator's inaction was unlawful and unfounded, the latter still ignores the lawyer's request.*

**Example:** *The pre-trial proceedings in the criminal case concerning the application by Daniyar Talantbek Uulu, dated 23 October 2018, on torture of him by officers of the Pervomay District Department of Internal Affairs of Bishkek, for the purpose of obtaining a confession to the commission of a crime, were twice terminated by the investigator of the Main Department of the State National Security Committee. The decision to terminate the case was twice declared illegal and groundless by the Pervomay District Court, and cancelled by the prosecutor with the instruction to conduct a further verification of the arguments of the alleged torture victim and to order a comprehensive psychological and psychiatric examination. However, counsel's request remains outstanding.*

- Ignoring requests to question a victim of torture and to recognize him/her as a victim;

**Example:** *In the criminal case No 150-18-60 concerning torture of Nargiza Razhapova, which has been under investigation for more than two and a half years, repeated requests of the lawyer of the human rights organization «Positive Dialogue» Abduraupova M. were dismissed. While there is the forensic psychological and psychiatric report that Razhapova Nargiza had suffered damage to her health as a result of torture. In this case, the other victims were not recognized as victims and not even were interrogated: Murat Razhapov, Damir Shabraliev, son of Razhapova - Eldiyar. No investigation was conducted into the torture of these persons.*

- Ignoring requests for the suspension of a suspect from his position as a procedural coercive measure where there are grounds for doing so;

**Example:** *On 3 December 2013, officers of the Kyzyl-Kyi Internal Affairs Department detained teenagers Emirlan Ermekbaj Uulu, Ali-Muhammad Ermek Uulu and Zhirgalbek Tumatov. All three were tortured to extract confessions. The young men were subjected to electric shocks and beatings with hands and feet all over their bodies. The criminal investigation and trial lasted seven years. On 5 June 2020, the Osh Regional Court handed down a verdict according to which Kanatbek Zholdoshov, Deputy Head of the Internal Affairs Department, Baktyar Kyzyl-Kyia Sydykov, Deputy Head of the Internal Affairs Department, Head of the Criminal Investigation Department of the Internal Affairs Department of Sovetaly Kzyk Kyia Orunbayev and Kadyrbek Kayimov were sentenced to various years of imprisonment with forfeiture of the right to hold certain posts for one year. The court imposed a suspended sentence on all the above-mentioned persons and set a probationary period of two years for each of them. The officers of the Kyzyl-Kyia Internal Affairs Department still work in the law enforcement agencies, some have even been promoted. During these seven years, counsel's requests for*



*suspension of the accused were ignored. All the time they were in different positions, threatening victims. Even after the verdict, all four officers continued to work in law enforcement. The lawyers of the human rights organization «Kylim Shama» sent an appeal to the Ministry of Internal Affairs of the Kyrgyz Republic with a request to dismiss these employees on the basis of a court sentence that has entered into force.*

Between 2017 and 2019, the investigative departments of the State National Security Committee sent a total of 6 criminal cases to court on charges of torture, including 3 in 2017, 2 in 2018 and 1 in 2019.

According to data from the National Centre for Prevention of Torture, reflected in the annual activity report for 2019, 48 per cent of the 145 criminal cases in this category under investigation by the State National Security Committee investigators were discontinued, mainly for the lack of evidence.

The fact that half of the criminal cases of torture have been dropped could indicate that impunity for perpetrators of torture and the lack of redress for victims remain a major problem today, as appears to be the case of continuation of this lawlessness by law enforcement officials.

### **Recommendations:**

1. Continue efforts to develop due process practices that guarantee the effective investigation and fair trial of each case of torture and ill-treatment, in accordance with the principles of promptness, independence, impartiality, comprehensiveness, prosecution and punishment of those responsible, in accordance with the gravity of the crime, and restoration of the violated rights of victims of torture.

2. Ensure that investigators investigating criminal allegations of torture examine and apply the criteria of international human rights bodies for effective investigation, including the Committee against Torture and the United Nations Human Rights Committee.

## **6. EXCLUSION OF INADMISSIBLE EVIDENCE OBTAINED UNDER TORTURE (Article 15)**

The CPC expressly stipulates that any evidence obtained by torture or ill-treatment shall not be admitted in court (part 3, article 12), and that statements obtained by torture shall be considered inadmissible. They have no legal force and cannot form the basis of a decision in a case (article 82, paragraph 4, paragraph 2).

In practice, judges generally consider statements by defendants that confessions and other evidence were obtained by torture as an attempt to evade criminal responsibility. This bias is reflected in the way the statement of the defendant or his counsel concerning torture is verified and in the decision on the defence motion to exclude evidence obtained as a result of unlawful acts.

In many criminal cases, lawyers petition the court for the exclusion of evidence obtained through torture, however the prosecutors often do not support the petition and leave it to the discretion of the court. Practice shows that judges in most cases do not grant such requests. Thus, when the accused complains that he has been tortured for a confession, the judges do not ensure that such statements are thoroughly and effectively verified and, as a result, sentences are handed down on the basis of evidence obtained by torture.

### **Recommendations:**

1. Amend the Criminal Procedure legislation so that confessions obtained by an investigator in pre-trial proceedings and not confirmed in court would be considered inadmissible evidence.

2. To intensify efforts to reform police, including by improving the criteria for evaluating the work of the law enforcement agencies, in order to eliminate any criteria, based on the percentage of solved crimes; and to promote the policy of zero-tolerance to torture and ill-treatment by police.

## **7. PROTECTION OF VICTIMS, MEMBERS OF THEIR FAMILIES, HUMAN RIGHTS DEFENDERS AND LAWYERS AGAINST REPRISALS (article 13)**

### **7.1. Legislative initiatives which might affect human rights defenders' activities**

On June 26, 2021 the President of Kyrgyzstan signed changes to the law «On non-profit organizations». The bill had previously been adopted in three readings by the Parliament of the Kyrgyz Republic.

The Act provides for the obligation of non-profit organizations to provide additional reporting to state authorities with more information about their activities, including information on sources of income, expenses, number and composition of employees, and remuneration.

The previous Kyrgyz legislation already prescribed for non-profit organizations to provide the tax authorities, the state social fund and state statistics bodies with information on their activities, including information on the finances, property, expenditure, number and composition of employees, their remuneration, etc. The State authorities have ample opportunity to monitor the compliance of non-profit organizations with the requirements of laws and other normative legal acts. Moreover, the state authorities are also entitled to take appropriate measures in case of any violations by representatives of non-profit organizations.

Thus, the provisions of the new law imposing the above-mentioned additional obligations on non-profit organizations, duplicate the previous legislation, and the proposed initiative is, in fact, another attempt of the authorities to tighten control over the non-profit sector.

### **7.2. Protection of human rights defenders and independent lawyers against intimidation or violence due to their activities**

## **1. Death of human rights defender Azimjan Askarov**

On 25 July 2020 human rights defender Azimjan Askarov, known for his investigations of torture by the police, died in the hospital of the correctional colony No 47. According to the medical report, the cause of Askarov's death was acute respiratory insufficiency, which, according to the investigation, developed against the background of double pneumonia.

To date, the authorities have failed to ensure an independent and impartial investigation into the death of the human rights defender.

## **2. Criminal case in retaliation for human rights activities**

On 29 May 2020 Kamil Ruziev, a human rights defender and head of the regional human rights organization «Ventus» was detained by the staff of the State National Security Committee in Issyk-Kul oblast. Kamil is known for his work in combating torture in places of deprivation of liberty. Initially, Ruziev was accused of forgery of documents and fraud<sup>16</sup>, later the prosecutor left only the charges of forgery of documents, and the court released the human rights defender under house arrest<sup>17</sup>.

In a joint statement, a number of international NGOs - Association Human Rights in Central Asia, Civil Rights Defenders, International Partnership for Human Rights, and Norwegian Helsinki Committee - expressed concern that the charges against Ruziev were in retaliation for his attempts to bring security officers to justice for torture, and that Ruziev faced in connection with those efforts<sup>18</sup>.

To express his protest against prosecution Ruziev Kamil went on a hunger strike when he was under arrest in the temporary detention facility. Three times doctors came to provide emergency medical assistance to him. Human Rights Watch called on the Kyrgyz authorities to revoke the house arrest of Kamil Ruziev, to drop all false accusations and to investigate allegations of threats by the country's security forces to Ruziev<sup>19</sup>.

On June 19, 2020 the Issyk-Kul Regional Court changed Kamil Ruziev's arrest to restriction on travel. The criminal case is at the stage of trial before the Karakol City Court of Issyk-Kul Region.

## **3. Threats to human rights defenders**

1. Human rights defender and a partner group leader Nurbek Toktakunov stated that he received calls with threats. According to a human rights activist, the last call came before a rally in defence of freedom of speech and against corruption #REact 2.0. Toktakunov also stated that he was being advised to leave the country. According to him, these advices were given by «*sympathetic GKNB officers*». He started to receive the threats after he addressed to

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<sup>16</sup> [https://24.kg/proisshestvija/154238\\_gknb\\_zapoddelku\\_dokumentov\\_zaderjan\\_pravozaschitnik\\_kamil\\_ruziev/](https://24.kg/proisshestvija/154238_gknb_zapoddelku_dokumentov_zaderjan_pravozaschitnik_kamil_ruziev/)

<sup>17</sup> [https://24.kg/obschestvo/154307\\_delo\\_kamilya\\_ruzieva\\_pravozaschitnika\\_otpustili\\_pod\\_domashniy\\_arest/](https://24.kg/obschestvo/154307_delo_kamilya_ruzieva_pravozaschitnika_otpustili_pod_domashniy_arest/)

<sup>18</sup> <https://www.iphronline.org/kygerystan-drop-charges-against-human-rights-defender.html>

<sup>19</sup> <https://www.hrw.org/ru/news/2020/06/05/375325>

the Prosecutor General's Office on the facts of illegal enrichment of Raiymbek Matraimov - Former Deputy Head of Customs and a subject of the journalists' investigation on corruption at customs<sup>20</sup>.

2. The former head of the Coalition for Democracy and Civil Society, human rights defender Dinara Oshurahunova, who also took an active part in rallies for freedom of expression and against corruption, reported being threatened. According to her, she received the following call: «*Dinara, if you make noise, we will beat you*»<sup>21</sup>.

According to Nurbek Toktakunov, the threats against him later stopped, but he did not withdraw the statement from the police. Thus, the police continue the pre-trial investigation previously initiated by Toktakunov and Oshurakhunov under article 145 of the Criminal Code, which provides for criminal liability for the threat of the use of violence dangerous to life and health.

#### **4. Harassment of the members of the Coalition against Torture**

In recent years, the persecution of human rights organizations and human rights defenders actively involved in the protection of human rights, including members of the Coalition against Torture, has intensified in Kyrgyzstan.

1. On 23 May 2019 unknown persons with cameras and tape-recorders who later claimed to be members of the Patriotic Youth Movement of Kyrgyzstan broke into the room where a working meeting of lawyers and jurists organized by the Coalition against Torture was held. They started to aggressively demand for meeting to be terminated.

They claimed that Western countries and their funded organizations were trying to destabilize peace in Kyrgyzstan. When the intruders were told that the meeting was devoted to discussion about international and national legal practice regarding protection from torture with international experts, they stated that they had been misled.

The participants of the meeting filed a complaint to the police regarding hooliganism and obstruction of the lawyer's professional activities. At the time of writing the present report, the perpetrators had not been identified and brought to justice.

2. On 6 April 2019 in the city of Karakol the office of the public foundation «Spectra», a member of the Coalition against Torture, was burnt. Human rights defenders filed a complaint to the law enforcement agencies of the city of Karakol. According to the Coalition, unknown persons set fire in two rooms of the office, but before that they had been looking for something. The fire destroyed the organization's important documents, built up over many years. Even though more than two years have passed since the incident, law enforcement authorities have not yet identified the cause of the fire or the perpetrators.

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<sup>20</sup> <https://24.kg/obschestvo/138353>

<sup>21</sup> <https://april.kg/ru/article/v-adres-dinari-oshurahunovoy-postupali-ugrozi-s-nesushhestvuyushhego-nomera>

## **5. Attacks on lawyers**

The State does not ensure the safety of lawyers during court proceedings. Serious concerns are raised by the incidents of threats and beatings of lawyers:

1. On 28 April 2017 in the building of the Osh City Court, a group of persons beat up lawyers Aisalkyn Karabaev and Muhayehon Abduraupov, a member of the Coalition against Torture, who represented the interests of a citizen of Nargiza Razhapova who had filed a complaint about the use of torture by police officers.

Lawyer Muhayekhon Abduraupova believes that what happened on April 28, 2017 in Osh City Court was a planned action by police officers suspected of torture, the investigator and the victim's lawyer. Along with Razhapova and the lawyers, the escorts were beaten and forced to hide the attacked women in a car for transport of the prisoners and take them away from the territory of the court. When the car was leaving, the crowd was shouting threats to the lawyers.

At the same day, the lawyers requested medical assistance. Muhayehon Abduraupova suffered a contusion of the soft abdominal tissue and Aisalkyn Karabaeva suffered bruises on the soft tissue of his shoulder and bruises. The injured lawyers filed a complaint with the SNSC and the Prosecutor's Office.

After the verification the application to institute criminal proceedings was refused. This illegal decision not to initiate criminal proceedings upon a complaint of the lawyers was cancelled by the court and the materials were returned to the prosecutor for new decision. Following a further inspection, the initiation of criminal proceedings was again refused. Thus, the attacks on the lawyers Aisalkyn Karabaeva and Muhayehon Abduraupova were not fully and thoroughly investigated, and the perpetrators were not identified and prosecuted.

2. On 11 May 2018, in the Osh Regional Court, after the hearings of the case of murder of State Service on Drug Control Colonel Tair Ularov, the injured party attacked lawyer Ramazan Kozhomkulov, who represents the defendants Damir Shabyraliev and Murat Razhapov. In March 2018, the Osh City Court found them guilty in the murder and sentenced to 23 years and 7 years of imprisonment accordingly.

According to the lawyer, he was attacked by several men and women. They grabbed him, hit him with a bag. The police officers were nearby and later intervened and dispersed the fighters. The lawyer said that each time they asked the court to provide security as there is still a direct threat to lawyers and defendants.

### **Recommendations:**

1. Stop the harassment of independent journalists, civil society activists and other citizens who openly criticize official the state policy.

2. Conduct thorough, impartial and prompt investigations into all cases of threats and violence against human rights defenders, lawyers and civic activists, including those described above, and bring those responsible to justice.

3. Ensure compliance with international human rights obligations and, in particular, the right to freedom of association. Abandon the legal initiative that imposes additional obligations on non-profit organizations and tighten control over the non-profit sector.

## **8. REPARATION AND REHABILITATION (Article 14)**

In its Concluding Observations on the second periodic report of Kyrgyzstan (paragraph 22), the Committee called upon the authorities of Kyrgyzstan to ensure the de facto access to timely and effective redress for all victims of torture and ill-treatment by: adopting and implementing legislation and policies explicitly providing for the right to remedy and reparation for victims of torture and ill-treatment; ensuring that effective rehabilitation services and programmes are established in the state accessible to all victims without discrimination, and are not dependent upon the victim pursuing judicial remedies; complying with the views of the Human Rights Committee relating to rights to remedy for torture victims.

The Committee's recommendation has not been properly implemented. According to the Coalition against Torture, since the consideration of the second periodic report, the Kyrgyz courts have granted compensation only in four cases for moral injury to victims of torture.

In all cases, the compensation awarded by the courts was disproportionate to human rights violations and did not meet the criteria of reasonableness and fairness. The current legislation of the Kyrgyz Republic establishes the need for compensation for moral damage but does not regulate the procedure for calculating the amount of moral damage. In practice, judges are not guided by the principles of fairness and adequacy, but by an assessment of available resources in the State budget.

Other forms of redress, such as a public apology and guarantees against future repetition, were not available to victims of torture, as such measures are not provided by the legislation.

Since 2017 the rehabilitation centre «Alter-Ego» has been operating the program on rehabilitation of torture victims, which is implemented by the Public Foundation «Voice of Freedom» since 2007. The main purpose of the centre is to provide medical and psychological assistance to victims of torture and ill-treatment and to members of their families. The centre and the program are financed by private foundations.

Specialized services and rehabilitation programs accessible to all victims of torture, funded by the State, are still absent.

### **Recommendations:**

1. Improve the system and practice of compensation for victims of torture and ill-treatment, based on the criteria of reasonableness and fairness.

2. Develop and introduce criteria which cumulative application should become the basis for judges to calculate the amount of compensation for moral damage caused by violations of human rights and freedoms, and, in particular, in cases of torture or death as a result of torture
3. Establish a state rehabilitation centre providing comprehensive and free services to victims of torture and their families. Alternatively, provide funding for rehabilitation programs for civil society organizations with relevant expertise.

## **9. CONDITIONS OF DETENTION (Articles 11 and 16)**

In its Concluding Observations on the second periodic report (paragraph 20), the Committee expressed concern at the extremely harsh conditions prevailing in places of detention, and recommended that the State intensify its efforts to improve conditions in places of deprivation of liberty, including in detention facilities for prisoners serving life terms, and to bring them into line with international standards, in particular the Standard Minimum Rules for the Treatment of Prisoners.

The Committee's recommendation has not been fully implemented. Some measures are being taken by the state bodies to improve conditions of detention. But despite this, there is a lack of systemic changes, and the conditions in places of detention and confinement in general do not meet the minimum requirements of international standards («Mandela Rules» et others) and national standards. This is confirmed by the results of the permanent monitoring carried out by the Akyikatchy Office (Ombudsman)<sup>22</sup> and NCPT<sup>23</sup>, and members of the Coalition against Torture<sup>24</sup>.

### ***Conditions of detentions of persons sentenced to life imprisonment***

As of 11 November 2019, 346 persons sentenced to life imprisonment before 1 January 2019 were serving sentences in the state institutions.

In general, the conditions of detention of convicted persons in SIZOs can be characterized as cruel and inhuman and totally inadequate in view of the planned period of imprisonment.

There is only one colony with a special regime in the country. This is Institution No 19, which infrastructure can accommodate a bit more than 100 convicted persons. The majority of convicts in this category serve their sentences in non-specialised institutions. Currently, persons sentenced to life imprisonment are serving their sentences in Bishkek SIZO-1, Osh SIZO-5 and Naryn SIZO-24, as well as in cell-type facilities in correctional colonies No 3, No 16, No 31 and No 47.

The detention conditions for this category of prisoners differ considerably from institution to institution. The harsh and discriminatory treatment in the penal institutions and the lack of rehabilitation programs for convicted persons reinforce the punitive nature of the

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<sup>22</sup> [http://ombudsman.kg/index.php?option=com\\_content&view=category&layout=blog&id=116&Itemid=302&lang=ru](http://ombudsman.kg/index.php?option=com_content&view=category&layout=blog&id=116&Itemid=302&lang=ru)

<sup>23</sup> <http://npm.kg/ru/analitika-i-dokumenty/ezhegodnye-doklady/>

<sup>24</sup> [https://notorture.kg/?page\\_id=1923](https://notorture.kg/?page_id=1923)

punishment. The conditions in the places of detention, especially in non-specialised institutions, are far below both international and national standards. Prisoners serving life sentences are separated from the rest of the prison population due to their status and are held in far more stringent conditions, which are not always guided by security<sup>25</sup>.

#### **10. PROTECTION AGAINST EXPULSION, REFOULEMENT, EXTRADITION AT RISK OF TORTURE (Article 3)**

In its Concluding Observations on the second periodic report (paragraph 23), the Committee recommended that the State take all necessary measures to ensure the principle of non-refoulement inter alia by: bringing the existing procedures and practices into conformity with article 3 of the Convention; and ensuring the adequate judicial mechanisms for review of decisions and sufficient legal defence are available to individuals subject to extradition, and effective post-return monitoring mechanisms.

The Coalition has documented two cases in which the State had ignored the Committee's recommendations.

1) On 10 May 2018, Murat Tungishbaev, a well-known Kazakh blogger who had created video clips on human rights violations in his country, was detained in Bishkek by officials of the State National Security Committee of the Kyrgyz Republic at the request of the Office of the Prosecutor-General of Kazakhstan.

The authorities of Kazakhstan accused him of «*financing the activities of a criminal association, possessing and disposing of property, organization of a channe for fundin*gl», and also of «*organization or participation in the activities of an organization which activities are prohibited by the court as extremist*». The activist himself refutes the charges.

On 21 May 2018, the Office of the Prosecutor-General of the Kyrgyz Republic authorized the extradition of Tungishbaev to Kazakhstan, where, according to the assessment of Human Rights Watch, he was highly likely to be subjected to torture or unlawful treatment, as well as criminal prosecution on political grounds<sup>26</sup>. On 25 June, the October District Court of Bishkek declared the decision of the General Prosecutor's Office to extradite a journalist to Kazakhstan to be lawful. On 26 June, Tungishbaev was handed over to the Kazakh side without waiting for an appeal and the completion of the asylum procedure.

Later, it was reported that Murat Tungishbaev's vision and pain had deteriorated, but the Kazakh authorities ignored it. The doctors stated that he should be hospitalized urgently. In the SIZO, due to the lack of proper medical care, there was a risk that he would completely lose his sight. Such treatment is a form of torture and ill-treatment.

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<sup>25</sup> Monitoring report on the rights and freedoms of those sentenced to life imprisonment, [https://notorture.kg/wp-content/uploads/2020/01/otchet\\_pls\\_2019.pdf](https://notorture.kg/wp-content/uploads/2020/01/otchet_pls_2019.pdf)

<sup>26</sup> <https://www.hrw.org/ru/news/2018/06/25/319487>



2) On May 31, 2021, Orhan Inandy, head of the «Sapat» educational network in Kyrgyzstan, disappeared in the capital of Kyrgyzstan under mysterious circumstances. Since 1995, Inandy has been working in the country and in 2012 he has received the citizenship of Kyrgyzstan. The Turkish authorities accuse Inandy of being linked to the terrorist organization responsible for the attempted coup in 2016. Human Rights Watch stated that if Inandy was returned to Turkey, he would face arbitrary detention and unfair trial on terrorism charges, as well as ill-treatment and torture.

Almost a month later, it became known that he had been taken to Turkey. It is still unknown by what means. Inandy told his lawyer in Turkey that he had been kidnapped by three Kyrgyz men, blindfolded and they helped someone else to take him out of the country. Other details, according to counsel, are not yet known. According to his lawyers, Orhan Inandy was tortured for 35 days and his arm was broken. The Military Prosecutor's Office has opened an investigation into the smuggling of Orhan Inandy.

There is no official information on the fulfilment by Kyrgyzstan of its obligations under article 3 of the Convention against Torture and the provision of effective monitoring mechanisms following the extradition of blogger Murat Tungishbaev, and the abduction of Orhan Inandy.

### **Recommendation:**

1. Publish official information regarding the fulfilment by Kyrgyzstan its obligations under article 3 of the Convention against Torture and the establishment of effective monitoring mechanisms following the extradition of Murat Tungishbaev, and the abduction of Orhan Inandy.

## **11. PROTECTION OF VULNERABLE GROUPS (Articles 2, 12, 13, 16)**

### **11.1. Violence against women**

In its Concluding Observations on the second periodic report (paragraph 18), the Committee recommended that the State should effectively combat violence against women by promptly investigating complaints related to such violence, and institute criminal proceedings against perpetrators and those aiding and abetting the kidnappings, even in the absence of a formal complaint; to provide protection to victims of domestic violence, including by establishing of appropriate shelters across the country; intensify awareness-raising campaigns to raise public awareness of these issues.

However, the State's positive obligations to respond to women's claims of domestic violence and discrimination have not been met. The State and law enforcement agencies do not perform prevention of crimes against women and do not effectively investigate reports and complaints of violence, which limits women's access to justice.

There are no systematic measures to conduct additional trainings to police officers, prosecutors and judges to deal with complaints and to provide women with effective

protection. There are no trained officers or methodologies for investigating domestic violence cases. A woman-victim has to tell a history of violence many times and to many different people, and this causes great anguish and secondary psychological trauma. There are no reception rooms for women with children, and often the woman cannot give details to the investigation because she cannot leave the child elsewhere.

There is no provision for legal services within state-guaranteed legal aid for women victims of violence. For example, in the cases of rape a suspect is entitled for services of a lawyer from the State guaranteed legal aid system, while the woman victim is not informed about her right to a lawyer from the SGLA system if she does not have financial means to hire a lawyer.

For women victims of domestic violence who run away from the aggressor without money or documents, it is more difficult to apply and undergo expert examinations. Because the woman has to go to the police station to submit an application, and sometimes applications are refused because the violence took place in the territory under jurisdiction of another police station. This means that a woman is forced to go to different police stations until she can submit a complaint.

*Example: On September 2, 2020, A.A., a victim of domestic violence, filed a complaint to the police department «Ak-Buura» of the municipal internal affairs office of the city of Osh. However, her complaint was refused as the crime had been committed in the territory of the Kara-Suu district and she was sent to the Kara-Suu district police department 20 kilometres away from the city of Osh. From the Kara-Suu district police station, she was sent to another police station. In order to register the complaint, a woman with injured arm and other parts of her body, together with her son, who had nauseated and vomited as a result of a head injury, had to travel half the day from one police station to another by taxi. Women do not always have the means to travel by taxi and there is no public transport between the districts.*

Another restriction to access justice is the paid services of experts and doctors to undergo an examination or to obtain an X-ray. Often due to a lack of means to cover these expenses, a woman is unable to undergo an examination in time, traces of violence disappear and the experts question the injuries. That ultimately affects the outcome of the case.

*Example: In 2019, H.M., a victim of domestic violence, filed a complaint to the police. However, after learning that she had to pay 200 soms (2,4 USD) to the expert for the examination, she refused to undergo the examination as she did not have money. The refusal to undergo expertise led to the termination of the case.*

On September 2, 2020, lawyer Muhayekhona Abduraupova failed to convince an expert to conduct an expert examination on the standards of the Istanbul Protocol, make a photograph table in relation to a woman and a 7-year-old boy, from whom the expert took 300 soms (3,6 USD) for an examination and failed to provide receipts.

Cases of rape of young girls are not properly investigated. This category is usually investigated by male investigators. The girls are interrogated about the circumstances of the rape by an investigator, then by a district inspector, then by a juvenile inspector, then by a social worker from the Social Protection Service, and as a result the child is traumatized. There is no uniform practice for investigating cases of domestic violence and violence against girls to avoid or mitigate re-traumatization.

**Example:** *The interrogation of 10-year-old I.M. about the circumstances of her rape was carried out at the police station «Ak-Buura» of the Department of Internal Affairs of the city of Osh. There were two investigators sitting in the office where the interrogation of the girl took place, and some visitors were coming to each of them. The man accused of rape was brought to the face-to-face interview by two guards, who were also present during the confrontation. So there were 7 or 8 people in the small room at one time, of whom the girl only knew her mother and the lawyer, the others were people she didn't know, and they were mostly adult men. In such an environment it was difficult for the girl to speak confidently and give details.*

## **11.2. Violence against children**

In its Concluding Observations on the Second Periodic Report (paragraph 21), the Committee expressed concern at reports that a significant number of children are subject to violence, abuse and neglect in families and in some care institutions. The Committee recommended to explicitly prohibit corporal punishment of children in all settings, including at home, in institutions and alternative care settings, and ensure awareness-raising and public education measures.

Monitoring of residential institutions for children between 2019 and 2020<sup>27</sup>, revealed the ineffectiveness of the system for prevention of violence, ill-treatment and torture. In particular, the child's filing of a complaint and appeal is related to his/her legal capacity, which limits the child's capacity and requires outside intervention (legislation does not provide for the child's right to appeal).

The residential institutions do not have a system for registering complaints and appeals, and children are not aware of the prohibition of the use of violence and of possibility of appealing against acts of violence. Children in orphanages and boarding schools do not have mobile phones, which limits the possibility of using the child hotline 111 and 115, and access to landlines is possible only through the administration of the institutions.

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<sup>27</sup> Report: «Protection of Children from Violence and Provision of Appropriate Conditions of Detention in Children's Homes and Residential Institutions of the Kyrgyz Republic» compiled within the framework of the project: «Monitoring of 100 closed institutions of Kyrgyzstan where children in conflict with the law are kept» implemented «League of Defenders of the Rights of the Child» together with the Office of the Ombudsman of the Kyrgyz Republic with the support of the PRI in Central Asia and the British Embassy. <http://crdl.kg/ru/about/reports/full/163.html>

The lack of children's awareness and practice affects the development of a legal culture, both for children and for staff involved in the system of prevention and response to violence and follow-up with child victims of violence. These questions relate to the principle of the participation of children as proclaimed in the Convention on the Rights of the Child.

**Recommendations:**

1. Continue efforts to combat violence against women by, inter alia, promptly investigating complaints of such violence, while fully respecting the rights and legitimate interests of the victim, ensure that perpetrators of violence against women and children are brought to justice.

2. Take measures to improve the effectiveness of the system for the prevention of violence, ill-treatment and torture in residential institutions for children. Policies governing the protection and care of children should aim at reducing the number of children admitted to various institutions, both public and private and the efforts to reform child care institutions should be intensified.

## **APPENDIX**

### **1. CASE OF NARGIZA RADZHAPOVA**

Nargiza Razhapova submitted a complaint that between 23 and 25 March 2017, she was tortured by the Osh's Internal Affairs Department officers to force her to confess her involvement in the murder. Nargis was dragged by the hair, needles were inserted under the nails, a plastic bottle was pushed into the genitals, resulting in bleeding, a bag was placed over the head and strangled, causing her to lose consciousness several times. For a long time, she was denied food, water and toilet. Nargiza was under psychological pressure. When she heard her son screaming in the police building, she was told that her son had been pushed a bottle into the anus, threatening to send her youngest son to an orphanage.

Only a year later, on 28 March 2019, due to the efforts of lawyers and jurists of the Coalition against Torture in Kyrgyzstan, it became possible to institute criminal proceedings for acts of torture.

In the course of the two-years investigation, no action had been taken to identify and prosecute the persons who had tortured Nargiza. Moreover, the investigators, despite numerous requests, did not recognize Nargiza as a victim, which significantly limited her and her lawyer's participation in the investigation. On 16 December 2019, the criminal case was terminated. Razhapova's lawyers appealed termination and obtained its annulment by the court.

Since January 2020, the investigation has been reopened, but according to the assessment of Nargiza and her lawyer, there are still no significant developments and that no measures are being taken to investigate the allegations of torture promptly, impartially and thoroughly.

In September 2020, the case was again terminated. Upon the appeal, the decision to terminate the proceedings was cancelled, and the investigation was entrusted to the State National Security Committee investigation department in Jalal-Abad province.

### **2. CASE OF MURAT RAZHAPOV AND DAMIR SHABRALIEV**

On March 23, 2017, Murat Razhapov and Damir Shabraliev were tortured by the officers «Zhodar» «Azamat» of the Internal Affairs Department of the city of Osh to force confessions. For more than three years, they have been unable to obtain the results of investigations into their allegations.

On March 27, 2017, Murat and Damir filed a complaint the Prosecutor's Office of Osh. The last refusal to institute criminal proceedings was issued by the investigator of the Prosecutor's Office of Osh on 29 April 2017.

On 16 February 2018, the Office of the Prosecutor-General of the Kyrgyz Republic cancelled that refusal and ordered the Prosecutor's Office of Osh to conduct an additional investigation.

However, the Office of the Prosecutor-General of the Kyrgyz Republic decided not to open a criminal case. No further investigation has been conducted into the allegations of Marat Razhapov and Damir Shabraliev, and to date no procedural decision has been taken on the allegations of torture against them.

### **3. CASE OF ALMAZ DAVLATOV**

On November 8, 2018, four officers of the Kyzyl-Zhar Local Police Department used torture against Almaz Davlatov to force him to confess committing cattle theft. Almaz was kicked on the inside of the thigh and on the front and side of the abdomen. One of the employees kicked him in the genitals. Almaz was then stripped of his clothes and forced to stand in front of an open window when the outside temperature was minus 2 degrees. The torture lasted over three hours. Unable to withstand torture, Almaz agreed to confess to cattle rustling. By a decision of the Uzgen District Court of 14 January 2019, the criminal case against Almaz Davlatov was dismissed in connection with reconciliation of the parties.

After his release, Almaz told his family about what had happened and contacted the Prosecutor's Office of Tash-Kumyr. The Public Prosecutor's Office has ordered the Office of the Prosecutor-General of the Kyrgyz Republic to investigate the situation in Jalal-Abad province.

The investigation of the allegation has been ongoing for almost two years, but no effective measures have been taken to identify and prosecute the perpetrators of torture. The investigator repeatedly rejected requests from a lawyer defending the interests of Almaz Davlatov to conduct face-to-face meetings and to reproduce the situation and circumstances of the crime.

The lawyer also requested the investigator to take protective measures against Almaz Davlatov, as he was harassed and pressured by the police to withdraw his claim of torture. On May 6, 2019, police officers of the Bazar-Korgon District Police took Almaz Davlatov into custody and again accused him of cattle rustling.