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Torture in Kyrgyzstan: Current concerns and recommendations

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TABLE OF CONTENTS

INTRODUCTION	3
Steps by the authorities to address concerns	4
Continuing torture, ill-treatment and impunity	5
TORTURE AND ILL-TREATMENT: CASE EXAMPLES	6
BASIC SAFEGUARDS NEED TO BE STRENGTHENED AND FULLY IMPLEMENTED	7
Detainees must be given access to basic safeguards as of the moment of apprehension	8
Detention record and explanation of rights	8
Notifying family	9
Access to a lawyer of the detainee's choice	9
Access to medical examination	9
Remand hearings	11
Exclude evidence extracted under torture	11
Independent inspection of detention facilities: The National Preventive Mechanism	11
ENDING IMPUNITY	12
Establish an independent investigation mechanism	13
Provide victims with reparation	13
No lenience for torturers	14
RECOMMENDATIONS	15

Torture in Kyrgyzstan: Current concerns and recommendations

INTRODUCTION

Although Kyrgyzstan has taken several noteworthy steps against torture and other forms of ill-treatment in recent years, such practices continue to be widely used and impunity is the norm. Continued international attention and political will of the Kyrgyzstani authorities to implement crucial recommendations by United Nations human rights bodies are needed to make significant progress toward the eradication of torture.

Kyrgyzstan has been a party to international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) since 1994 and 1997 respectively. The country has thus obliged itself to take effective measures to prevent acts of torture in any territory under its jurisdiction, to investigate and prosecute them.

The international community paid increased attention to torture in Kyrgyzstan in recent years, in particular following interethnic violence in the south of Kyrgyzstan in June 2010 that left hundreds dead and thousands injured and led to hundreds of thousands fleeing their homes. During and in the aftermath of the June 2010 violence, there were also scores of reports about torture and other forms of ill-treatment by security forces.

Since then several United Nations (UN) human rights bodies and mechanisms including the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture),¹ the UN High Commissioner for Human Rights,² the UN Committee against Torture³ and the UN Human Rights Committee⁴ have studied the situation and issued recommendations to the authorities of Kyrgyzstan aimed at the eradication of torture in the country. Recommendations on torture and other human rights concerns were also made under the UN's Universal Periodic Review (UPR) process in January 2015.⁵

The NGO Coalition against Torture in Kyrgyzstan, consisting of 18 non-governmental organizations (NGOs) and two independent experts, has closely monitored and analyzed domestic legislation pertaining to the issue of torture and has documented numerous cases involving allegations of torture or other ill-treatment from across the country for many years. It has provided the above-mentioned mechanisms and procedures with up-to-date and in-depth information on legislation and practice regarding torture.⁶

¹ The Special Rapporteur on torture visited Kyrgyzstan in December 2011. His report about the mission was issued on 21 February 2012, (UN document: A/HRC/19/61/Add.2): <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/106/04/PDF/G1210604.pdf?OpenElement>

² The April 2012 Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights in Kyrgyzstan (UN document: A/HRC/20/12) can be accessed on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-12_en.pdf

³ The Committee against Torture reviewed Kyrgyzstan's second periodic report in November 2013 and issued concluding observations on 20 December 2013 (UN document: CAT/C/KGZ/CO/2). Refer to: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/KGZ/CO/2&Lang=En

⁴ The Human Rights Committee reviewed Kyrgyzstan's second periodic report in March 2014 and issued concluding observations on 23 April 2014 (UN document: CCPR/C/KGZ/CO/2). Refer to: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KGZ/CO/2&Lang=En

⁵ Refer to: http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/a_hrc_wg.6_21_l.1.pdf

⁶ See, for example:

- "NGO Report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Kyrgyz Republic", Bishkek 2013:
http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KGZ/INT_CAT_NGO_KGZ_15547_E.pdf

Steps by the authorities to address concerns

In 2012, in response to international concern, a Working Group that included government agencies and NGOs drafted the “Action Plan against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment in the Kyrgyz Republic”. The Action Plan was adopted on 23 October 2014, but key recommendations made by civil society, such as ensuring implementation of all rulings and recommendations issued to Kyrgyzstan by UN human rights procedures and mechanisms, were not included in the final version.

In recent years the authorities of Kyrgyzstan have taken several concrete steps to address the persistence of torture and other ill-treatment.

For example, in June 2011, a Memorandum of Cooperation on Human Rights and Fundamental Freedoms was signed by the Ombudsman of Kyrgyzstan, the Organization for Security and Co-operation in Europe’s (OSCE) Center in Bishkek and the Public Foundation Kylym Shamy. The Memorandum was subsequently extended and joined by government agencies including the General Prosecutor’s Office, the Ministry of Internal Affairs, the Ministry of Justice, the Government Service for the Execution of Punishments at the President’s Office and by other NGOs. As a result, members of the monitoring group, which consisted of civil society activists and Ombudsman staff, were then authorized to pay unannounced visits to a wide range of penitentiary institutions including temporary detention facilities (IVS) under the jurisdiction of the Ministry of Internal Affairs, and pre-trial detention facilities (investigation isolation facilities or “SIZO”) run by the Government Service for the Execution of Punishments as well as psychiatric institutions and institutions for children run by the Ministry of Social Development.

In order to build on Kyrgyzstan’s accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2008, the Zhogorku Kenesh of the Kyrgyz Republic (Parliament) set up the National Center of the Kyrgyz Republic for the Prevention of Torture in June 2012, and endowed it with powers to carry out the functions of the National Preventive Mechanism (NPM). In 2014, the above-mentioned Memorandum expired and was not renewed as the NPM started functioning at the beginning of that year. Since then NPM staff and civil society activists have jointly monitored places of deprivation of liberty.

Kyrgyzstan also introduced some positive legislative changes. For example, in August 2012, Article 17 of the Law on Detention⁷ was amended to the effect that lawyers do not need written permission by the investigator, prosecutor or court anymore when visiting their clients in detention.

Also in 2012, Article 305-1 of the Criminal Code of Kyrgyzstan, entitled “torture”, was amended to the effect that torture was classified as a serious crime (parts 1 and 2 of the Article) or very serious crime (part 3), thus ruling out the possibility that perpetrators avoid prosecution when they reach reconciliation with the victim.

On 9 December 2014, the Ministry of Health obliged medical personnel to conduct examinations and document findings in line with the Manual on Effective Documentation of Violence, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that had been elaborated jointly by the Ministry, the Soros Foundation (Kyrgyzstan) and NGOs based on the UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol. The head of the Government Service for the Execution of Punishments that oversees the penitentiary system also obliged medical personnel to use a specifically designed form for the documentation of torture and other ill-treatment that is also based on standards of the Istanbul Protocol.

- “NGO report on the implementation by Kyrgyz Republic of articles of the International Covenant on Civil and Political Rights to the UN Committee on Human Rights”, Bishkek 2014:

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KGZ/INT_CCPR_CSS_KGZ_16331_E.PDF

- Joint Submission of NGOs to the Universal Periodic Review of Kyrgyzstan, June 2014: http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/js8_-_joint_submission_8.pdf

⁷ The full title of the law is “On the Order and Conditions of Detention of those held on Suspicion of or Charged with Committing a Crime.

Continuing torture, ill-treatment and impunity

Despite these positive steps, torture continues to be widely used by law enforcement agencies and impunity is the norm.

International human rights bodies have come to similar conclusions. For example, in its Concluding Observations on the second periodic report of Kyrgyzstan, adopted on 25 March 2014, the UN Human Rights Committee expressed concern “about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty for the purpose of extracting confessions, particularly in police custody”.

In the framework of the above-mentioned Memorandum local NGOs conducted extensive monitoring of detention facilities across Kyrgyzstan and interviewed hundreds of detainees. In 2011, they interviewed 193 detainees in all 47 temporary detention facilities run by the Ministry of Internal Affairs in Kyrgyzstan. The interviewees were chosen solely on the criterion that they voluntarily agreed to speak to the monitors. Sixty of them reported having been subjected to torture or other ill-treatment. Fifty of them stated that police wanted to extract a confession, while the other ten responded that police abused them as a means of punishment.⁸ In 2012, the monitoring group interviewed 1052 detainees in 47 temporary detention facilities, two reception centres (run by the Ministry of Internal Affairs) and three investigation isolation facilities (run by the Government Service for Execution of Punishments). A total of 379 individuals reported to have been subjected to torture or ill-treatment while in detention. More than half alleged that law enforcement officers tortured or ill-treated them before placing them in a temporary detention facility.⁹ In 2013, NGOs visited all 47 temporary detention facilities and four investigation isolation facilities. During that year they interviewed only those detainees -- a total of 831 individuals -- who had injuries on their bodies and/or had submitted complaints about torture or other ill-treatment and wished to speak with the monitors.¹⁰

Methods of torture or other ill-treatment recorded by local NGOs in recent years have included applying electric shocks to different parts of the detainee's body, rape, sticking needles under the finger nails, putting a plastic bag or an oxygen mask over the detainee's head and squeezing tight the air supply, hitting the detainee with different objects, kicking and beating.

There are several reasons why torture and other ill-treatment persist in Kyrgyzstan. The majority of law enforcement officers continue to work according to a quota system – albeit unofficially – under which they are ranked and assessed by the number of crimes they have successfully solved.¹¹ Such a system exacerbates the risk that police officers will resort to torture or other ill-treatment to obtain a confession to a hitherto unsolved crime. During the 2013 NGO monitoring programme a total of 90.4 per cent of all those who alleged to have been subjected to torture or ill-treatment claimed that police abused them to obtain a confession.

In its 2013 Concluding Observations on the second periodic report of Kyrgyzstan the UN Committee against Torture also raised concern “at the State party's persistent pattern of failure to conduct prompt, impartial and full investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, which has led to serious underreporting by victims of torture and ill-treatment, and impunity for State officials allegedly responsible” (Paragraph 6). (For further information about ongoing impunity, refer to the chapter “Ending Impunity” below.)

This briefing summarizes our main concerns; it also includes case examples and key recommendations that we urge the authorities to prioritize and implement as a matter of urgency.

⁸ “Torture Prevention in Temporary Detention Facilities under the Ministry of Internal Affairs of the Kyrgyz Republic. Monitoring. Reaction. Rehabilitation”, Bishkek 2011: <http://www.osce.org/bishkek/93782?download=true>

⁹ “Observance of the Right to Freedom from Torture in Closed Facilities of the Kyrgyz Republic. Monitoring. Response. Rehabilitation”, Bishkek 2012: <http://www.osce.org/bishkek/100473?download=true>

¹⁰ This report is available online in Russian only: <http://golossvobody.kloop.kg/report>

¹¹ The authorities have acknowledged that the quota system continues to be applied within law enforcement agencies in Kyrgyzstan. On 30 April 2013, the Government of Kyrgyzstan issued a decree (no. 220) on “Measures to Reform the Agencies of Internal Affairs of the Kyrgyz Republic”, where it identified the quota system as a key reason why crime statistics were inadequate. Since then no system has not undergone significant reform.

TORTURE AND ILL-TREATMENT: CASE EXAMPLES

Police who reportedly abused Yuri Marchenko must be brought to justice

In September 2011, a traffic police officer approached **Yuri Marchenko** in front of his house in the village of Tup in the north-eastern Issyk-Kul region of Kyrgyzstan as he was repairing his motorbike and asked him to present legal documents relating to his motorbike. The young man said he would fetch them from his house, but the officer reportedly started beating him and called several other officers who handcuffed Yuri Marchenko and continued beating him as they were taking him with them. Neighbours who had witnessed the abuse called his mother. She told the Coalition against Torture in Kyrgyzstan: "I immediately went to the prosecutor's office and filed a complaint. Then I went to the local police station. Yuri wasn't there, but someone told me where he was. When I got there I saw how they were beating my son." She went to the head of the local police station to complain. Her son was released, but police reportedly kept urging the family for weeks to withdraw the complaint the mother had filed with the prosecutor's office of Tup district.

Some two months later, when returning home on his motorbike in the night of 21 November, Yuri reported that he was followed and stopped by five men, some of whom he recognized as officers of Tup police station. One of the men pulled him off the motorbike using a gun. The five reportedly beat him severely with their fists and metal objects and threatened to "lock him up" in the police station. He lost consciousness several times. Eventually, when he noticed the men had left, he was able to alert his friend with his mobile phone, who carried him home. Yuri Marchenko was covered in blood, suffered from a headache and nausea and had difficulty breathing. It is believed that police targeted him to retaliate for his mother's complaint to the district prosecutor's office.

On 22 November, Yuri Marchenko was hospitalized at Tup district hospital for two weeks and doctors recorded fractures in his nose and two rib bones, other injuries to his chest and head and bruises and abrasions in different parts of his body.

The same day Yuri Marchenko's mother went to file a complaint with the prosecutor's office of Tup district. She recalled: "They refused to record my complaint. The next day I reported the incident to the police authorities. Since then my son has received threats of reprisals". On 1 December, she also filed a complaint with the Department of National Security of Issyk-Kul region.

Shortly afterwards, a criminal investigation was opened, but it was closed in April 2013 for "lack of evidence of a crime". However, the criminal case was reopened in June 2013 and charges were brought against three police officers for torturing or ill-treating Yuri Marchenko. The trial made little progress as the defendants failed to appear in court for trial for many months. Finally, the court issued two defendants with a warning to ensure that they appear in court and the trial was able to start in April 2014. A search warrant was issued for a fourth police officer allegedly implicated in subjecting Yuri Marchenko to torture or other ill-treatment and the court ordered that he be arrested, but he is still at large. No charges have been brought against the alleged fifth perpetrator although Yuri Marchenko offered the investigators to identify him.

The Coalition against Torture in Kyrgyzstan is aware of many trials of perpetrators in torture-related cases that have not progressed for years. Therefore we believe that international attention to this case is needed to ensure that the perpetrators are brought to justice.

The investigation into allegations of torture made by Maksat Suranaliev, Ulan Bokachiev and Kanat Kadyrov has to be conducted effectively

Three young men – Maksat Suranaliev, Ulan Bokachiev and Kanat Kadyrov – were detained by plainclothes officers in different locations in the capital city of Bishkek on 20 May 2014 and taken to Oktyabrsky district police station. There, each of them was reportedly taken to different offices and severely tortured throughout the night to force them to confess to a murder that took place in Bishkek earlier in May. The three men insist they are innocent. At least two of them reported to have heard the investigator ordering the officers to torture them.

Maksat Suranaliev later told his lawyer that police put a plastic bag over his head several times; one officer then pressed his hands around the young man's throat while another closed his mouth and

nose until Maksat lost consciousness. Police reportedly also beat and hit him, including with a truncheon on his head, and kicked his genitals. In the morning he was reportedly taken to a cell in the police station and not given any food or drink all day. Late that evening he was entered into the temporary detention facility in Bishkek. The next day he was reportedly taken to the police station again for an interrogation and beaten, but Maksat Suranaliev continued to insist he was not involved in the murder. When police delivered him to the investigation isolation facility (SIZO) in Bishkek on 23 May 2014, he signed a paper in the presence of police that he had sustained the injuries before the arrest because he was afraid of reprisals. However, later that day he told medical personnel of the SIZO that police tortured him and medical personnel recorded injuries including bruises and wounds.

During a visit of the National Center of the Kyrgyz Republic for the Prevention of Torture, the country's NPM, to SIZO No. 1 in Bishkek, **Ulan Bokachiev** reported that he was taken to an office on the second floor of Oktyabrsky district police station on 20 May 2014, where he had to sit down and was handcuffed to a chair. According to him, police put down the chair so that his face was on the floor and pulled his legs towards his arms as they remained handcuffed to the back of the chair. At the same time police officers hit his legs with truncheons and put a plastic bag over his head. Reportedly, police also repeatedly applied electric shocks to his buttocks and heels. He was allegedly only detached from the chair the next morning and taken to a cell in the basement where -- following instructions by the investigator -- he was not given any food or drink all day. However, he continued to insist he did not commit the murder and refused to write a confession statement.

Kanat Kadyrov was taken to an office on the second floor where police reportedly put a plastic bag over his head many times until he almost lost consciousness, threatened to kill him and beat and kicked him severely. An officer reportedly fired his gun several times with a blank cartridge close to Kanat Kadyrov's ear. In the morning he confessed to the murder, but he later told his lawyer he was innocent and only signed the confession because he could not bear the torture anymore.

On 27 May 2014, the NPM of Kyrgyzstan paid another visit to SIZO No. 1 in Bishkek, together with a medical doctor of the NGO Voice of Freedom, who examined the three men. The doctor concluded that all were suffering from severe stress disorder and had bruises in different parts of their bodies. With regard to Maksat Suranaliev the doctor additionally recorded injuries to his head and concussion. She also suspected a broken shin and a broken collar-bone. When examining Ulan Bokachiev the doctor also recorded a broken bone in his right foot. Kanat Kadyrov had head injuries and concussion and she suspected that he had a broken rib.

The three men submitted complaints to the prosecutor's office about torture and ill-treatment in police custody. To date no criminal cases have been opened against any of the alleged perpetrators. On 22 January 2015, the Prosecutor General's Office ordered a complex forensic examination, which is currently being conducted.

BASIC SAFEGUARDS NEED TO BE STRENGTHENED AND FULLY IMPLEMENTED

Torture or other forms of ill-treatment mainly take place in the early stages of detention when detainees are in many cases de facto held incommunicado, although torture cases are also reported from later stages of detention and imprisonment. We believe that by strengthening and fully implementing basic safeguards protecting detainees in police custody and pre-trial detention the authorities could significantly reduce incidents of torture and other ill-treatment.

In its March 2014 Concluding Observations the Human Rights Committee expressed concern "about the lack of implementation of basic safeguards to all persons deprived of their liberty, including failure to register all detainees immediately upon apprehension; the lack of access to a lawyer of their choice; the lack of a medical examination immediately after their apprehension and the lack of access to medical assistance" (Paragraph 16).

This chapter provides an overview of the main discrepancies between international human rights law and domestic legislation with regard to basic safeguards and highlights key gaps in the implementation of existing safeguards. It also cites several key recommendations and Concluding Observations issued to Kyrgyzstan by UN human rights bodies and mechanisms in recent years, which we believe should be implemented as a matter of urgency.

Detainees must be given access to basic safeguards as of the moment of apprehension

International human rights law clearly states that a person is considered a detainee as soon as he or she is “depriv(ed) of liberty [...] in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority” (Article 4(2) of the OPCAT). From the moment the detention starts, safeguards against torture and ill-treatment must be in place, including prompt access to a lawyer of the detainee’s choice, access to independent medical assistance and notification of family.

In its November 2013 Concluding Observations the Committee against Torture recommended Kyrgyzstan to ensure that “(a)ll persons deprived of liberty are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty” (Paragraph 9(a)).

However, Kyrgyzstani domestic legislation does not accord with these norms. The Criminal Procedure Code (CPC) of Kyrgyzstan considers a person to be detained when a person is entered into a detention facility run by the Ministry of Internal Affairs (Article 95, part 1 of the CPC). It provides no information on how much time may elapse between the actual arrest and the entering of a detainee into a detention facility. The CPC does not provide detainees with basic safeguards until they have been entered into a detention facility and their detention has been recorded.¹²

Police often summon people as “witnesses” or simply call them in for “a conversation”. In these cases there is no registration of the person being present in a police station, and he or she has no access to safeguards to which detainees are entitled under domestic law. Police officers reportedly often torture such individuals in order to obtain incriminating evidence or confessions that subsequently form the basis for opening criminal cases against them.

In practice, detainees are routinely held incommunicado in the first hours, sometimes even days, of detention, before they are entered into an official police detention facility. Local human rights groups recorded many cases of detainees who alleged that police initially held them in basements, traffic police cars or offices of police stations and subjected them to torture or other ill-treatment.¹³

Detention record and explanation of rights

The Special Rapporteur on Torture recommended Kyrgyzstan in February 2012 to “(e)nsure strict adherence to registration from the very moment of apprehension” (Paragraph 81(a)). Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles on Detention) states that the detention record must include information about the time of the arrest, the place of custody and the identity of the law enforcement officials involved in the arrest.

Both legislation and practice in Kyrgyzstan differ from these principles. The CPC of Kyrgyzstan stipulates that the detention record has to be completed no later than three hours after a person was entered into a detention facility (Article 95, part 1 of the CPC). Police are not required to record the time and place of the actual arrest. They are also not required to record the identity of the arresting officers. The lack of such requirements facilitates incommunicado detention and provides the authorities investigating torture complaints with an excuse for claiming it was not possible to establish the identity of the arresting officer/s. In practice the detention record is often completed when the detainee has already signed a confession statement.

Principle 13 of the UN Body of Principles on Detention states that “(a)ny person shall at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

In Kyrgyzstan the CPC requires police to explain to the detainee his or her rights only when the detention record is presented to him or her. However, the legal requirement to notify detainees of their rights, albeit at such a late stage, is not routinely implemented in practice. Out of a total of 66 alleged victims of torture or other ill-treatment interviewed by the NGO Voice of Freedom between 2009 to

¹² A recent case example can be found on: <http://vof.kg/?p=18479> (in Russian).

¹³ For example, refer to the 2013 monitoring report, which is available in Russian on: <http://golossvobody.kloop.kg/report>

2012, only two responded that they were explained their rights.¹⁴ The situation is believed to have remained largely unchanged.

Notifying family

In 2012, the Special Rapporteur on Torture called on Kyrgyzstan to “reduce the 12-hour period envisaged for notification of arrest by the investigator to the family” (Paragraph 80(c)).

However, in this regard domestic legislation has also remained unchanged and the CPC stipulates that the investigator has to inform the detainee's relatives about the detention within 12 hours (Article 99, part 1 of the CPC). Human rights defenders in Kyrgyzstan have documented cases where relatives were not informed within the 12-hour-limit.¹⁵

In the current context in Kyrgyzstan notification of family is a particularly important safeguard as family members in many cases try to hire an independent lawyer for the detainee and prevent them being issued with an ex officio (state-appointed) lawyer who, as is often the case, may be a lawyer hand-picked by investigators in the knowledge that this particular lawyer will not provide effective defence and may be inclined to overlook ill-treatment.

Access to a lawyer of the detainee's choice

The UN Committee against Torture recommended Kyrgyzstan in November 2013 to ensure that “(a)ll persons deprived of their liberty have prompt access to assistance from independent lawyers, and can communicate privately with them” (Paragraph 9(b)).

Article 24 of the Constitution of the Republic of Kyrgyzstan stipulates that a person has a right to access to a lawyer “from the actual moment of deprivation of liberty”. However, in Kyrgyzstan there is no legal mechanism whereby detainees could contact a lawyer immediately upon apprehension. Article 40 of the CPC stipulates that a suspect has the right to a lawyer “from the moment of the first interrogation and (...) from the moment of de facto entering him into the agency of inquiry” (a similar provision can also be found in Article 44 of the CPC).

Member organizations of the NGO Coalition against Torture in Kyrgyzstan have documented many cases where no lawyer was present during interrogations. Almost half of all 831 detainees interviewed by local human rights activists during the 2013 monitoring programme of 47 temporary detention facilities and four investigation isolation facilities alleged to have seen their lawyer for the first time at the remand hearing.

It is not only crucial that detainees have access to a lawyer from the moment of de facto deprivation of liberty, but also that they are represented by qualified and independent legal counsel of the detainee's choice. To address this issue, the Special Rapporteur on torture recommended Kyrgyzstan in 2012 to “(o)verhaul the system of State-appointed lawyers completely and replace it with an open and transparent process of fairly remunerated independent lawyers, a process that is not controlled in practice by the investigating officers; and foresee the establishment of national legal aid programmes that guarantee access to a lawyer for all detainees, including prior to interrogation” (Paragraph 81(b)).

In Kyrgyzstan, in those cases where detainees or their families do not hire their own lawyer, but the detainee requests legal counsel or the participation of a lawyer is obligatory by law (cases of especially serious crimes), the detainee is entitled to a lawyer whose services are paid from the state-budget. In practice police investigators often invite lawyers “hand-picked” by them, who typically do not put up a strong defence and overlook ill-treatment.

Access to medical examination

Independent medical examination of detainees is an important safeguard against torture and medical documentation of injuries or other signs of torture or ill-treatment is crucial in order to bring to justice

¹⁴ Refer to Paragraph 55 of the joint NGO report to the UN Human Rights Committee, entitled “NGO report on the implementation by Kyrgyzstan Republic of articles of the International Covenant on Civil and Political Rights to the UN Committee on Human Rights”:

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KGZ/INT_CCPR_CSS_KGZ_16331_E.PDF

¹⁵ For a case example, refer to: <http://vof.kg/?p=13602>

the perpetrators.

In 2012, the Special Rapporteur on torture called on Kyrgyzstan to “ensure timely access to independent medical examination at all stages of the criminal process” (Paragraph 81(c)). Additionally, in order to ensure independence of medical staff examining detainees, the Special Rapporteur on torture and the Committee against Torture recommended Kyrgyzstan in 2012 and 2013 respectively to consider transferring responsibility for oversight of medical staff in detention facilities to the authority of the Ministry of Health.

Domestic legislation stipulates that every time a person is entered into a temporary detention facility he or she undergoes a medical examination that is arranged for by the facility’s administration and that has to be recorded. When a detainee, a relative or the lawyer lodge a complaint about torture or other ill-treatment, a similar medical examination has to be conducted (Article 40, part 5 of the CPC).

In practice, detainees do not undergo an independent routine medical examination upon admission to temporary detention facilities (IVS) and investigation isolation facilities (SIZO) in Kyrgyzstan. Medical professionals working in detention facilities in Kyrgyzstan lack independence as they are employed by the very institution that runs the respective facility. Some IVS have their own medical attendants – employees of the Ministry of Internal Affairs -- and medical personnel in SIZOs are employed by the Government Service for the Execution of Punishments that runs pre-trial detention facilities and prisons. Member organizations of the NGO Coalition against Torture in Kyrgyzstan have documented many cases in recent years where medical personnel in temporary detention facilities and investigation isolation facilities failed to record injuries sustained as a result of torture or ill-treatment.

In those cases where IVS do not have their own medical attendants police usually take detainees to local public health clinics where they are examined by doctors or medical attendants -- employed by the Ministry of Health -- for the legally required examination before entering them in temporary detention facilities. These examinations sometimes take place in the presence of police officers. For fear of reprisals doctors often ignore injuries likely sustained through torture or other ill-treatment and victims often refrain from telling doctors about police abuse. Lack of sufficient training on the detection and documentation of abuse are another reason why torture or ill-treatment are often not adequately recorded.

As mentioned in the introduction, in 2014 the Ministry of Health and the Government Service for Execution of Punishments obliged medical personnel to document evidence of torture in line with the standards of the Istanbul Protocol. In recent years medical personnel have been trained on the standards of the Istanbul Protocol, but additional trainings are needed to further raise the quality of medical examinations of torture victims across Kyrgyzstan.

In its 2013 Concluding Observations the Committee against Torture recommended Kyrgyzstan “that all persons deprived of their liberty are guaranteed timely access to a qualified and independent medical investigator upon their request” (Paragraph 6(c)).

The Coalition against Torture in Kyrgyzstan is aware of many cases where prosecutors or judges did not order forensic medical examinations when a detainee alleged to have been tortured or ill-treated and requested to be given access to a medical doctor. In those cases where the victim's relatives contacted human rights organizations or independent lawyers, complaints were submitted to the prosecutor's office to request a forensic medical examination. However, due to the delay, evidence of torture had often disappeared by the time the detainee was presented to the forensic expert.

On 16 May 2013, the Law on Forensic Examinations was adopted, which introduced the institute of independent medical examinations into domestic legislation. However, the law prescribes that apart from obtaining a certificate from the Ministry of Health upon graduation, independent forensic experts also have to obtain another certificate issued by another government agency in order to carry out their work. We believe that this procedure of special licensing provides the authorities with inappropriate control over what is meant to be an independent institution. However, as the other government agency has not yet been established, in practice independent medical, psychiatric and psychological forensic experts have been working in Kyrgyzstan without the additional certificate since the law came into force. In addition, we are concerned that the Law on Forensic Examinations does not require forensic experts to follow the standards of the Istanbul Protocol.

The Special Rapporteur on torture recommended Kyrgyzstan in 2012 “that reports of independent forensics are attributed the same evidentiary weight as reports prepared by State-appointed forensic experts.” However, the NGO Voice of Freedom has documented cases where courts attributed lesser evidentiary weight to the conclusions of independent experts than to those provided by forensic experts employed by the Ministry of Health.

Remand hearings

In its November 2013 Concluding Observations the Committee against Torture urged Kyrgyzstan to ensure that (a)ll persons deprived of liberty are afforded, in law and in practice, (the right) to be brought before a judge within 48 hours of their deprivation of liberty” (Paragraph 9(a)).

The CPC stipulates that detainees have to be brought before a judge no later than 48 hours after he or she was detained. However, police count these hours as of the moment when the detention record is completed, not when the person was actually deprived of liberty.

The Special Rapporteur on torture urged the authorities in 2012 to “(e)ncourage judges and prosecutors to routinely ask persons arriving from police custody how they have been treated and to order an independent medical examination if they suspect that the detainee has been subjected to ill-treatment” (Paragraph 81, (i)). However, to date, domestic legislation does not require judges at remand hearings to ask detainees how they were treated in custody. In those cases where detainees make allegations of torture or other ill-treatment at remand hearings judges typically ignore them.¹⁶ Thus, remand hearings rarely function as a safeguard against torture or other ill-treatment.

Exclude evidence extracted under torture

The CPC stipulates that “no one can be convicted based solely on his own confession of committing a crime” (Article 12, part 5) and that “statements made by the accused or defendant, including a confession of his or her guilt, have to undergo obligatory checking and assessment based on the overall context of all evidence in the case” (Article 83, part 5).

However, in practice, police continue to extract confessions under duress and judges typically heavily rely on the defendants’ “confession” even if other evidence contradicts or partly contradicts the “confession”. Judges often view defendants’ allegations that his or her confession was extracted under torture as an attempt to avoid responsibility for a crime.

Independent inspection of detention facilities: The National Preventive Mechanism

As mentioned above, the Kyrgyzstani Parliament set up the National Center of the Kyrgyz Republic for the Prevention of Torture in 2012 and endowed it with the authority to carry out the functions of the NPM, which include conducting regular visits to places of detention and making recommendations to the authorities aimed at preventing torture and other ill-treatment and improving the conditions of those deprived of liberty. Legislation was adopted providing for penalties if officials prevent members of the NPM to carry out their work. On 2 August 2013, a Director was appointed to set up the institutional framework of the new mechanism. In 2014, the NPM was provided with an office, it was allocated financial resources and began conducting monitoring visits. However, the NPM's effectiveness is still hampered by insufficient technical equipment such as computers, photo and video equipment as well as cars needed for monitoring visits.

¹⁶ For example, refer to page 48 of the 2013 monitoring report accessible in Russian on: <http://golossvobody.kloop.kg/report>

ENDING IMPUNITY

The authorities do not publish comprehensive statistics on complaints, investigations and convictions for torture or other ill-treatment. However, information provided by official sources indicates a very low percentage of cases where full investigations are carried out into complaints and perpetrators are subsequently brought to justice.

In 2013 and 2014, the Prosecutor General's Office of Kyrgyzstan received 265 and 220 complaints involving torture or other ill-treatment respectively. It opened criminal proceedings in only 18 (in 2013) and 16 (in 2014) of these cases respectively. In the remaining cases no full investigations were carried out. All 16 cases where criminal proceedings were opened in 2014 had been submitted by torture victims with the support of NGOs and lawyers belonging to the Coalition against Torture. This indicates that in Kyrgyzstan it is crucial for a victim of torture not only to submit a complaint to the authorities, but to receive independent and qualified legal aid and be represented by a lawyer who follows the case very closely.

The NGO Coalition against Torture in Kyrgyzstan and cooperating lawyers documented over 80 cases both in 2013 and in 2014 of men, women and children involving allegations of torture or other forms of ill-treatment and urged prosecutor's offices to conduct prompt, thorough, impartial and independent investigations into the allegations.¹⁷ Although the strength of evidence in support of the allegations available to the Coalition in these cases is high, criminal cases were opened in only 16 cases in 2014.

When criminal proceedings are instigated into allegations of torture and other forms of ill-treatment they are often opened under articles of the Criminal Code such as "exceeding official authority" (Article 305), "negligence" (Article 316), "compelling to give evidence" (Article 325). In 2003 the crime of "torture" was added to the Criminal Code (Article 305-1).

In its Concluding Observations the UN Committee against Torture expressed concern that the definition of torture in this article of the Criminal Code "limits criminal responsibility to public officials, excluding other persons acting in an official capacity." It also "regrets that the specific offence of torture is not punishable by appropriate penalties, as required by the Convention" (Paragraph 10).

In 2013, the courts dealt with a total of 35 criminal cases involving allegations of torture or other ill-treatment on various charges of the Criminal Code. Since Article 305-1, entitled "torture", was introduced in the Criminal Code of Kyrgyzstan in 2003, only three police officers have been convicted under this Article.¹⁸

In 2013 and 2014, the NGO Voice of Freedom provided legal assistance in 48 cases involving allegations of torture and other ill-treatment. In 24 of these cases prosecutors brought charges against police officers alleged to have been responsible. Only five police officers were sentenced to prison terms, but four of them were given suspended sentences and the fifth was sentenced to four years' imprisonment.¹⁹

In many cases victims of torture or other forms of ill-treatment and their relatives refrain from lodging complaints with the authorities or from seeking assistance from human rights groups for fear of reprisals and/or because they do not believe it is possible to obtain justice.²⁰

In 1994, Kyrgyzstan acceded to the Optional Protocol to the ICCPR. By doing so it provided people in Kyrgyzstan, who have exhausted all domestic remedies for alleged violations of their rights guaranteed under the Covenant, with the possibility to submit individual complaints to the Human Rights Committee. To date, the Human Rights Committee has reviewed seven individual complaints from Kyrgyzstan involving allegations of torture or other forms of ill-treatment and has ruled in all these cases that effective investigations into the allegations should be carried out; that the perpetrators be

¹⁷ The Coalition against Torture in Kyrgyzstan continued to receive complaints in 2015, but it has not yet compiled statistics for the first months of the year.

¹⁸ For further information, refer to: <http://vof.kg/?p=13937> (in Russian).

¹⁹ For case examples, refer to: <http://vof.kg/?p=13763> and <http://vof.kg/?p=14013> (in Russian).

²⁰ For example, refer to the 2013 monitoring report accessible in Russian on: <http://golossvobody.kloop.kg/report>

brought to justice; and that the victims be provided with full reparation, including appropriate compensation.²¹ However, to date, none of these rulings has been implemented in Kyrgyzstan.

Establish an independent investigation mechanism

In line with Article 38 of the CPC of Kyrgyzstan, the internal security services of the Ministry of Internal Affairs, the Financial Police, the State Committee for National Security, the Drug Control Agency or other law enforcement agencies conduct a preliminary inquiry into allegations of torture or other ill-treatment if victims submit their complaint to these very agencies that are implicated in the complaint. However, due to the lack of impartiality of this form of inquiry, the agencies usually conclude that the allegations have not been substantiated. As a result, in the vast majority of cases, no criminal cases are opened. During the preliminary inquiry, victims are not awarded the procedural status of “victims”. As a result, they are neither entitled to contribute evidence for consideration by those conducting the preliminary inquiry, nor are they permitted to see the inquiry report.

Torture complaints can also be submitted to prosecutors. However, human rights defenders are aware of many cases in recent years where prosecutors took no action at all on such complaints or prosecutors registered the reports not as complaints about the crime of torture, but as complaints about misconduct of individual law enforcement officers, thus leading to internal examinations of their conduct under a confidential disciplinary procedure.

Domestic legislation states that when a criminal case is opened, investigations into crimes committed by government agents involving torture or other forms of ill-treatment are conducted by prosecutors (Article 163, part 3 of the CPC).

Prosecutors, like the police, have an interest in reducing and resolving crime. In order to achieve this goal prosecutors may be inclined to overlook human rights violations committed by police, such as torture. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links, which often poses an obstacle to thorough and impartial investigations into violations committed by police.

In those cases where torture violations are revealed during the court hearing prosecutors also have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

In order to address the lack of impartiality and independence of preliminary inquiries and investigations into allegations of torture or other ill-treatment in Kyrgyzstan, the NGO Coalition against Torture in Kyrgyzstan has for many years called on the authorities to establish an independent mechanism to promptly conduct thorough and impartial investigations into all credible allegations of torture or other ill-treatment. It is crucial that such a mechanism have no hierarchical or institutional link to the alleged perpetrator and is endowed with sufficient authority, competence and resources. In 2015, the Prosecutor General’s Office started engaging in discussions with the NGO Coalition against Torture in Kyrgyzstan about how such a mechanism could look like in Kyrgyzstan.

Provide victims with reparation

In 2012, the Special Rapporteur on torture recommended that Kyrgyzstan “(e)stablish clearly set out enforcement mechanisms to provide victims with effective remedy and redress, including compensation and as full rehabilitation as possible by allocating funds in the national budget; and fulfil the right of the victim to obtain redress through civil litigation regardless of whether the guilt of a public agent has been determined by a court on a criminal case” (Paragraph 81(k)).

The CPC of Kyrgyzstan stipulates that victims of crime have a right to compensation for harm suffered as a result of unlawful measures (Article 21, part 2 of the CPC) and that applications are reviewed by civil courts (Article 52, part 1 and Article 422, part 2 of the CPC). While international standards hold

²¹ Rulings by the Human Rights Committee on these cases can be found on:
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KGZ&Lang=EN

that the state is responsible for the damage caused by torture and ill-treatment and has to provide compensation, Article 16 of the Civil Code of Kyrgyzstan stipulates that civil courts can order the perpetrator to provide compensation for harm suffered.

There have been some court decisions in recent years where perpetrators were ordered to provide compensation to victims. However, to our knowledge, none of the victims have yet received the payments.

We are also concerned that Kyrgyzstani legislation provides for compensation only in those cases where the perpetrator of torture has been brought to justice and convicted in criminal proceedings. Kyrgyzstan should act in accordance with universally recognized international human rights standards and ensure that compensation is granted to all victims of torture or other ill-treatment, including in those cases where the perpetrator has not been identified.

There are references to rehabilitation in the CPC, but it does not prescribe in full terms the enforceable right of victims to the means for as full a rehabilitation as possible.

There is only one rehabilitation programme for torture victims in Kyrgyzstan, run by the NGO Voice of Freedom. From 2007 to 2014, the NGO has provided medical, psychological and social services to 493 torture victims.

Other forms of reparation such as measures of satisfaction and guarantees of non-repetition have not been made available to torture victims in Kyrgyzstan and legislation does not provide for such measures.

No lenience for torturers

In 2012, the Special Rapporteur on torture recommended that the Kyrgyzstani authorities “ensure in the Law on Amnesty that no person convicted for the crime of torture will be entitled to benefit from an act of amnesty” (Paragraph 80(a)). However, Kyrgyzstani legislation still does not exclude the application of amnesty laws to torturers.

In its November 2013 Concluding Observations the Committee against Torture expressed concern “that the statute of limitations applicable to the offence of torture under domestic law may prevent investigation, prosecution and punishment of these non-derogable crimes” and called on the authorities to “ensure that the prohibition against torture is absolute and that there is no statute of limitations for acts of torture” (Paragraph 10). Regrettably, the statute of limitations has yet to be abolished.

RECOMMENDATIONS

As a party to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kyrgyzstan has committed itself to preventing acts of torture and other ill-treatment under its jurisdiction.

The authorities of Kyrgyzstan should implement all Concluding Observations and recommendations made by the Special Rapporteur on torture (2012), the UN High Commissioner for Human Rights (2012), the UN Committee against Torture (2013), the UN Human Rights Committee (in 2014) as well as recommendations aimed at ending torture that were made under the Universal Periodic Review process in January 2015.

Below is a list of recommendations that we believe should be implemented by the authorities of Kyrgyzstan as a matter of urgency in order to make significant process toward ending torture in the country.

Strengthening basic safeguards against torture

- Amend legislation to ensure that the definition of deprivation of liberty is in line with international human rights law, in particular that the moment of apprehension is treated as the outset of detention.
- Amend the Criminal Procedure Code of Kyrgyzstan (CPC) to ensure that it explicitly provides, from the moment a person is deprived of his or her liberty, for access to basic safeguards such as access to a lawyer of the detainee's choice, information about the detainee's rights, notification of family, and access to an independent medical doctor.
- Amend the CPC to the effect that the identity of the arresting officer/s, as well as time and location of the arrest have to be included in the detention record.
- Fundamentally reform the system of state-appointed lawyers and replace it with an open and transparent process (that is not in practice controlled by investigators) of fairly remunerated independent lawyers.
- Ensure that anyone being entered into a detention facility undergoes a routine and thorough medical examination.
- Ensure that personnel carrying out medical examinations in temporary detention facilities and investigation isolation facilities are truly independent from the agencies running the detention facilities.
- Ensure that medical professionals examining detainees are trained in accordance with the provisions of the UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- Oblige forensic experts to adhere to the standards of the Istanbul Protocol.
- Issue guidelines to judges instructing them to give equal evidentiary weight to reports by state-forensic experts and by independent forensic experts.
- Guarantee the independence of forensic experts in private practice by ensuring that no undue control is exerted by the authorities over the certification process of these experts.
- Clarify in the law that all detainees are brought before a judge within 48 hours after apprehension; and ensure that judges inquire into their treatment in custody.
- Ensure in practice that any statement or confession elicited as a result of torture or other ill-treatment is not used as evidence in any proceedings except those brought against the alleged perpetrators.
- Ensure that the National Center of the Kyrgyz Republic for the Prevention of Torture receives sufficient funding to allow it to carry out its mission effectively.

Ending impunity

- Publish comprehensive statistics on complaints, investigations and convictions for torture or other ill-treatment.
- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations, bringing to justice in a fair trial those found responsible, providing adequate and full compensation to torture victims, and reporting on the measures taken in the mass media.

- Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment.
- Ensure that there are clear provisions in domestic legislation on the right of torture victims to reparation, including fair and adequate compensation and rehabilitation for damages caused by torture, regardless of whether perpetrators of such acts have been brought to justice. Legislate that the state must provide compensation for torture or other ill-treatment.
- Implement all decisions the UN Human Rights Committee has made under its Individual Complaints Procedure.
- Legislate that perpetrators of torture or other ill-treatment are excluded from prisoner amnesties and abolish the statute of limitations with regard to such crimes.

Recommendations on individual cases

The case of Yuri Marchenko:

- Ensure that those believed to have subjected Yuri Marchenko to torture or other ill-treatment in 2011 are swiftly brought to justice, including by ensuring that the police officers accused of torturing or ill-treating him do not fail to appear in court for future hearings so that the trial can proceed.
- Give assurances that Yuri Marchenko is protected from further police reprisals.
- Provide him with full reparation including compensation.

The case of Maksat Suranaliev, Ulan Bokachiev and Kanat Kadyrov:

- Ensure that the investigation into allegations that Maksat Suranaliev, Ulan Bokachiev and Kanat Kadyrov were subjected to torture by Oktyabrsky district police in Bishkek in May 2014 is conducted thoroughly, impartially and independently.
- Ensure that anyone found responsible for subjecting the men to torture is brought to justice in fair proceedings and that the victims are provided with full reparation including compensation.