



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

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Chairperson: Mr. Grossman

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Second periodic report of Kyrgyzstan (continued) (CAT/C/KGZ/2)

1. *At the invitation of the Chairperson, the delegation of Kyrgyzstan took places at the Committee table.*
2. **Mr. Khaldarov** (Kyrgyzstan) said that article 305-1 of the Criminal Code, which had been thoroughly revised in 2012, complied amply with article 1 of the Convention against Torture. The same article specifically mentioned discrimination as a possible motivating factor for such offences. Prior to its amendment the Code, which dated from 2003, had indeed contained provisions incompatible with the Convention. The involvement of persons who were not public officials in acts of torture and other offences was addressed under article 30 of the Code. A committee had been set up to prepare further draft amendments to the Criminal Code and the Code of Criminal Procedure with a view to bringing them fully into line with international standards.
3. Under amendments made to the Code of Criminal Procedure in 2012, reconciliation agreements between the parties no longer had any influence on criminal court proceedings for offences, including torture, that were included in articles 303–315 of the Code, nor could suspended sentences be imposed on persons found guilty of such offences. Previously, many such criminal cases had been dropped when the parties came to a mutual understanding. Since 2012, the offences addressed in article 305-1 had been categorized as serious or very serious, and the penalties to which perpetrators, including public officials, were liable corresponded to those degrees of seriousness. The Constitution and the Code of Criminal Procedure specifically ruled out the use of confessions obtained under torture as evidence. Article 81 of the Code stipulated that court decisions based wholly on evidence obtained in contravention of the Code's provisions were unlawful.
4. In order to detect violations of the law by public officials, the Office of the Procurator-General regularly conducted unannounced inspections of police stations, prisons and all other places of detention, including those run by the military. The Office's work included visits to staff offices, interviews with the public, monitoring of complaints, the conduct of medical examinations for signs of ill-treatment, and monitoring the number of medical examinations of suspects upon arrest. The Office had the task of responding immediately to, and thoroughly investigating, reports of torture. Where it was established that a crime had been committed, the Office initiated criminal proceedings. The Office monitored criminal proceedings that had been suspended or dropped in order to ensure that such decisions had been made in accordance with the law. It cooperated with human rights NGOs, organized joint events and was working on further measures to prevent torture and eliminate its causes.
5. Members of the Committee had suggested that many reports of torture in the State party had not been investigated. Criminal investigations took place only when it was deemed that allegations were sufficiently substantiated. The newly established national preventive mechanism, which had recently become operational, was an independent body with a coordinating council whose members included the Ombudsman, two members of parliament and eight human rights defenders. A memorandum of cooperation on the defence of human rights signed by the Ombudsman, the Procurator-General's Office, the ministries of Internal Affairs, Health and Justice, the prison service and a dozen NGOs constituted another independent mechanism for monitoring the use of torture.
6. Turning to the case of Azimjan Askarov, he said that the procurators had investigated his allegations that he had been tortured during questioning. His conviction had

not been based solely on his confession. The courts had found that his allegations of torture had been ill-founded. In spite of the fact that several appeals, including one to the Supreme Court, had been rejected, the Procurator-General's Office was currently reviewing the case yet again. Should the review establish that he had a case, the Supreme Court would be approached for a review of his conviction.

7. **Mr. Abdyrahmanov** (Kyrgyzstan) said that wide-ranging reforms of the justice system over the previous two years had left it stronger, independent and free of interference by other branches of State power. Under legislation passed in 2010, all judges had been obliged to reapply for their positions by means of a competitive selection process. The justice system had been made more transparent through a series of Government decrees and a joint memorandum issued by the Supreme Court and the bar association, under which the legal profession as a whole committed itself to promoting greater openness, ease of access to legal documents and greater public faith in the country's legal institutions.

8. A website (<http://www.sot.kg>) had been established to provide access to court rulings and other legal documents. The increasing use of video and sound recordings of court cases contributed to the objectivity and accountability of the courts and their proceedings. The new Supreme Court website (<http://jogorku.sot.kg>) provided detailed information on the work of the courts and progress in reforming the justice system. It would soon be possible for individuals and legal entities to file complaints online.

9. Supreme Court judges could be relieved of their duties by a two-thirds majority vote of parliament on the recommendation of the President of Kyrgyzstan and the Congress of Judges. Local court judges could be removed by order of the President on the recommendation of the Congress of Judges. No judge could be removed from his or her post without a recommendation by the Congress of Judges. Judges and other members of the legal profession undertook continuing training to upgrade their skills. Slander was not a criminal offence in the State party; however, victims could apply for compensation under civil law. A justice reform committee had been established in early 2012 to draft legislative amendments with a view to bringing all domestic legislation fully into line with international standards. A bill should be ready for consideration by parliament in 2014.

10. A complaint by Tatiana Tomina that she, Ulugbek Usmanov and their lawyers had been threatened by unknown persons outside the Supreme Court had not been followed up by the authorities as Ms. Tomina had failed to substantiate the allegations. The courts had rejected a petition by Dildor Baimurzaev to investigate allegations of torture for procedural reasons. Similar allegations by Farrukh Gapirov, on the other hand, had led to a criminal investigation because Mr. Gapirov had followed the correct procedures. However, that case had been dropped because Mr. Gapirov had been unable to identify the alleged offenders. Criminal proceedings against police officers accused of involvement in the death in custody of Tashkenbai Moidunov had been closed because the parties had reached an agreement whereby Mr. Moidunov's mother had received financial compensation. The sister of Khaidakhan Jumabaev, who had died in custody, had applied to the Ministry of Finance for compensation. However, her case had not been brought to court because she had left the country.

11. **Mr. Abdylakimov** (Kyrgyzstan), acknowledged that the majority of torture victims, particularly during the unrest in the south of the country in 2010, had been persons of Uzbek origin, said that everything possible was currently being done to rectify the situation. Special units were investigating those events with a view to bringing the worst of the criminal offences to light.

12. Under the law, persons could not be held in custody for more than 48 hours. Within that period, they must either be charged and brought before a court or be released. They had the right to be informed of the reasons for their arrest and were entitled to unfettered access

to legal counsel, visits by family members and a medical examination. Under planned amendments to the law, confessions and other evidence obtained in the absence of a lawyer would be inadmissible in court.

13. There was a shortage of pretrial and short-term detention facilities in the four southern provinces and there were plans to build new detention centres in the provinces of Jalal-Abad, Batken and Talas. Medical care was provided in prisons in accordance with the provisions of the Istanbul Protocol. The Ministry of Health had issued a decree regarding the training of health specialists on the protocol. Full medical examinations were carried out on persons who claimed to have been tortured. Under planned legislative amendments, censorship of detainees' correspondence would become unlawful.

14. Since 2011, the Office of the Procurator-General had become much more active in investigating complaints of torture and victims had become more forthcoming in submitting complaints to the Office. In the first eight months of 2013, however, the number of complaints had declined, indicating that the State party's efforts to combat torture were bearing fruit. The number of court cases for acts of torture had decreased since 2011. In many instances, the Office could not mount a court case because of a failure on the part of the complainant to substantiate the allegations of torture.

15. Turning to the case of Zulhumor Tohtonazarova, who had been charged with robbery, he said that her complaint alleging torture had been typed in the Kyrgyz language. However, she neither spoke it nor knew how to type. Moreover, a medical examination had revealed no signs of ill-treatment. Subsequently, she had confessed her guilt and been convicted. The allegation that she had been pregnant when placed in custody had also proved false.

16. The case concerning Bektimir Akunov had been closed, given that the forensic investigation had not been able to confirm allegations that Mr. Akunov had been subjected to physical harm during a police interrogation and had concluded that his injuries could have been inflicted by a cellmate. A court decision was pending in the Usmonyhon Kholmiraev case, which concerned Mr. Kholmiraev's death in custody. The four law enforcement officials charged in the matter had been dismissed. Under the relevant law, complaints of torture were dealt with exclusively by the Office of the Procurator-General and were not transmitted to the body against which the complaint was lodged.

17. **Mr. Djumashev** (Kyrgyzstan) said it was true that conditions in detention facilities were far from ideal. Nevertheless, the State was committed to improving them, as could be seen from the following developments: budgetary allocations for improving conditions in temporary holding facilities had increased dramatically in 2013; a project to monitor conditions in those facilities and remand centres had been carried out with the assistance of international organizations; and all temporary detention facilities had been fitted with automatic video cameras that could record continuously for periods ranging from one to six months, thus providing an effective deterrent to ill-treatment and torture. Moreover, in 2012, a memorandum of cooperation had been signed between State institutions and human rights organizations allowing those named in the memorandum to perform inspections without prior notice. Thus, in spite of the many problems, constant improvements were being made to conditions of detention.

18. Regarding concerns expressed by Committee members about the high number of deaths in custody, he provided statistics on the number of such deaths and their causes over the past several years, including the number of cases in which criminal proceedings had been initiated. In the first 10 months of 2013 there had been 50 deaths in custody: 45 as a result of disease, 3 from poisoning and 2 from suicide. Criminal proceedings had been initiated in both cases of suicide. In 2011, 101 militia officers had been the subject of disciplinary proceedings, and in 2012 the figure had stood at 127. Ministry of Internal

Affairs personnel who had been the subject of criminal proceedings and found guilty were dismissed.

19. With regard to efforts to combat domestic violence, a Ministry of Internal Affairs plan had been adopted to meet the requirements of the Social and Legal Protection against Domestic Violence Act, and a number of women's shelters had been set up throughout the country. In the first 10 months of 2013, some 2,162 incidents involving domestic violence had been reported. In addition, there had been two cases of child abuse in 2012, and three had been reported in 2013. An information and awareness-raising programme on the protection of children's rights had been launched, but a great deal of work remained to be done in that area.

20. **Ms. Iskakova** (Kyrgyzstan) said that a bill for the establishment of an ombudsman's office in accordance with the Paris Principles was under consideration in parliament. Constitutional provisions did provide for the right of victims of torture to compensation but the mechanisms to implement it were not yet in place.

21. On the question whether Kyrgyzstan envisaged making the declaration under article 22 of the Convention, she explained that her country had undertaken a very large number of obligations as a result of its accession to several major international treaties and its participation in the universal periodic review process; obligations which it was endeavouring to fulfil. For that reason, the decision to recognize the competence of the Committee to receive and consider communications from individuals was still under consideration.

22. Kyrgyzstan had acceded to the Convention relating to the Status of Refugees in 1996, and since then had granted refugee status to more than 20,000 people. The Refugees Act governed all decisions to grant or deny such status, and its provisions were in conformity with international refugee law requirements. The Government had plans to renovate several regional psychiatric hospitals, despite budgetary constraints, and had received funding from the World Bank to construct hospitals in three southern regions of the country.

23. **Mr. Tugushi** (Country Rapporteur) said that, despite the recognition of fundamental rights and guarantees in the national laws and regulations, the Committee had received numerous allegations of the Government's failure to respect them. He asked what measures were envisaged to remedy that situation, and to ensure that investigations were carried out in accordance with the law and that the Office of the Procurator-General remained an independent public institution.

24. He wished to know whether forensic doctors received regular training and whether adherence to the Istanbul Protocol was obligatory and an integral part of that training. He enquired what practical measures were taken to ensure the independence of forensic doctors and whether the Government planned to ensure that weight was given in criminal proceedings to the results of alternative forensic examinations.

25. He wished to know about tangible indicators that steps were being taken to address the corruption and unprofessionalism prevalent throughout the justice administration system. He asked whether all cases of death in custody were investigated and what plans there were for the construction of new prisons. He enquired how many police officers had been prosecuted and convicted in 2012 and 2013 on charges of torture or ill-treatment and when the national preventive mechanism was expected to become operational.

26. According to reports, lesbian, gay, bisexual and transgender (LGBT) people and sex workers, especially those who belonged to ethnic minorities, were frequently subjected to intimidation and ill-treatment by the police and prosecutors. What measures were envisaged to address that problem? He would like to know whether a decision to place an individual

in a mental institution was subject to judicial review and, asked about the status of the Chym-Korgon psychiatric hospital, given the reports of deplorable conditions there and recommendations that it should be shut down. Lastly, he wished to know whether any progress had been made in developing the community-based mental health-care system and whether financial resources had been allocated with a view to its effective implementation.

27. **Ms. Gaer** (Country Rapporteur) said that there appeared to be significant contradictions between the information presented in the second periodic report and the replies given to the Committee, and also between that information and the allegations the Committee had received from NGOs and other international organizations. Although the report described a number of admirable objectives, it was clear that, in general, greater attention needed to be paid to the investigation of evidence presented by complainants. She reiterated her previous question whether a statute of limitations applied to the offence of torture.

28. Turning to the case of Azimjan Askaraov, who was a well-known ethnic Uzbek human rights defender in Kyrgyzstan and whose work had focused on reporting police abuse, she enumerated the many abuses to which he had allegedly been subjected. They included: ill-treatment while in police custody in retaliation for his human rights work; torture and forced confession; denial of medical treatment for the effects of his torture, with the complicity of law enforcement and prosecutorial officials; and reprisals against him and his lawyers both before and during his trial. Despite the seriousness of those allegations, Mr. Askaraov was currently serving a life sentence. Yet any one of those allegations could be considered grounds for reviewing the evidence, changing the verdict or investigating the various government officials implicated. She requested an explanation of the reasons for the Supreme Court's rejection of several appeals in that case. The delegation should indicate what measures had been taken to initiate or create a mechanism for the consideration of all cases relating to the June events in Kyrgyzstan and whether compensation was provided, irrespective of ethnic background, for victims of a miscarriage of justice.

29. She asked whether compensation had been paid in the Moidunov case, how many police officers had been investigated, prosecuted and punished in the Gapirov case, and why allegations of torture had been disregarded by the courts in the Khaidarov case despite numerous witnesses to the fact. She wished to know whether any of the perpetrators in the Akunov case had been investigated, prosecuted and punished for acts of torture and what decision had been taken in the Amanbaev case. She also enquired whether any of the police officers recently found guilty of exceeding official authority had been sentenced to a prison term and what steps had been taken to address the 14 cases of torture submitted to the Human Rights Committee.

30. Regarding complaints of police misconduct, she requested further information on reports that police officers routinely targeted members of the LGBT community and subjected them to violence. Had measures been put in place to facilitate the police complaint process, particularly for complaints submitted by ethnic Uzbeks? She enquired whether the 157 persons guilty of bride-kidnapping had been prosecuted and punished, whether fines had been used as a penalty for such offences, whether persons aiding and abetting the perpetrators had also been prosecuted, and whether compensation had been paid to the victims.

31. As to the temporary detention centres, she wished to know what steps had been taken to address the inhuman and degrading treatment and conditions suffered by prisoners and whether any prison officers had been prosecuted for negligence. She asked whether efforts had been made to ensure the independence of the judiciary and develop a more transparent selection process for judges and magistrates. She requested further information on the investigation into the case of the four Uzbek citizens returned to Uzbekistan in August 2006 and asked whether safeguards had been put in place to ensure that they were

not subjected to torture or ill-treatment upon their return. Lastly, she wished to know whether efforts had been made to widely publicize the recent directives on the detection, prevention and punishment of torture among public officials and the general public.

32. **Mr. Mariño Menéndez** asked whether the foreigners recognized as asylum seeker by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Kyrgyzstan had had their status officially recognized by the State. What would happen to those persons if UNHCR decided to withdraw its protection? On the question of forced returns, he wished to know whether it was the judicial or administrative authorities' responsibility to issue expulsion orders and whether any monitoring mechanisms had been established to ensure returns were conducted in accordance with the provisions of the Convention.

33. **Ms. Sveaass** asked the delegation to clarify how cases of torture were investigated and documented. She wished to know what steps would be taken to improve conditions in child psychiatric units and care homes and whether a complaint mechanism had been introduced to enable children to report ill-treatment. What measures had been taken to prevent children from becoming victims of sexual violence or corporal punishment at home and in schools?

34. **Ms. Belmir** asked the delegation to explain what training judges received so that they could consider torture cases more effectively and ensure that victims had greater access to justice.

35. **Mr. Bruni** asked what steps had been taken to ensure that prison cells conformed to international minimum standards.

36. **Mr. Domah** asked what efforts had been made to include in the Criminal Code a definition of torture which encompassed all the provisions contained in article 1 of the Convention, in particular with reference to third persons.

37. **The Chairperson** noted that torture was often undetected. The Government must ensure that adequate safeguards were put in place to prevent torture in all settings.

38. **Ms. Gaer** asked what measures had been taken to improve the preliminary investigation process for acts of torture and to protect lawyers representing victims of torture, particularly ethnic Uzbeks, from retaliation and reprisals. How many cases of violence against lawyers had been investigated, prosecuted and punished?

39. **Mr. Khaldarov** (Kyrgyzstan) said that legislative amendments had been introduced in an effort to strengthen the national response to torture and ill-treatment, but problems remained in the de facto enforcement of such laws. There had been difficulties in bringing the perpetrators of torture or ill-treatment to justice and the number of complaints of torture compared with the number of prosecutions for those offences remained disproportionately high. The Government recognized that there were systematic weaknesses in the legal system and numerous measures had been taken to address the matter. Nevertheless, judges remained free from influence and could hand down whatever punishment they saw fit for acts of torture and ill-treatment.

40. The Government was aware of the weaknesses in the police complaints mechanism and the general public's lack of trust in the authorities. It should, however, be noted that not all law enforcement officials resorted to ill-treatment or torture in the exercise of their duties and most worked for the good of society. The directives on the detection, prevention and punishment of torture had been widely disseminated, inter alia to the general public and the media, in an attempt to counteract negative opinions and behaviour, and video recording had been introduced in police stations and detention facilities as an additional safeguard against torture.

41. On the question of prison deaths, he confirmed that each case was carefully investigated and a forensic examination carried out to establish the cause of death. If the death was found to have resulted from torture or ill-treatment, criminal proceedings would be initiated.

42. The national courts considering the Azimjan Askaraov case had found him guilty as charged. The Government had initiated a review of the facts to determine whether there had been any irregularities in his trial, but it was important to note that his status as a defender of the Uzbek population would not absolve him of criminal liability if he was found guilty.

43. **Mr. Djumashev** (Kyrgyzstan) said that criminal proceedings had previously been brought in the case of prison deaths but only where there had been clear evidence of torture or ill-treatment. As to alleged police violence against the LGBT community, the Government had made efforts to investigate each case but NGOs representing the victims had been unwilling to release the names of the persons concerned or details of the attacks, so no further action could be taken.

44. In the case of Khairullo Amanbaev, numerous witnesses, including an Uzbek national, had reported seeing him fall from a second floor window after attempting to flee during a meeting with his lawyer. Such cases were not common in Kyrgyzstan and no data on such matters were kept by the Internal Security Department.

45. On the question of prison cell size, the Government was aware of the national Ombudsman's report, which stated that some detention centres allowed only 1 square metre per detainee. It had consequently provided prisons with additional resources in an effort to remedy the problem.

46. The Government recognized that many children in the country were subject to violence and corporal punishment, and steps had been taken to increase the penalties for such crimes. Every school organized teacher training courses on combating violence and corporal punishment, and school inspections took place on a regular basis to ensure that the appropriate child welfare standards were met.

47. **Mr. Abdyrahmanov** (Kyrgyzstan) said that the Judicial Selection Board responsible for appointing judges was an independent collegial board comprising 24 members, including acting judges and representatives from the parliamentary majority and opposition. Once appointed, judges were free from influence and considered torture cases in exactly the same way as any other criminal case.

48. As to the attack against lawyer Tatiana Tomina, the courts were obliged to ensure order throughout the legal proceedings but they could not guarantee the protection of lawyers outside the courtroom. Ms. Tomina had ultimately decided not to submit a complaint about the alleged attack and had asked for the criminal case to be closed.

49. Regarding the case of Tashkenbai Moidunov, the judicial authorities had failed to identify the perpetrator of the offence but an out-of-court settlement had been reached. The sister of the deceased had also applied for compensation through the civil courts but had subsequently decided not to continue with the case.

50. **Mr. Djumashev** (Kyrgyzstan) said that every prisoner must undergo a medical examination upon arrival in prison, and doctors conducting the examinations must complete an independent medical report. The Ministry of Health had recently introduced obligatory training courses on the Istanbul Protocol for all medical professionals, and independent medical evidence carried legal weight in court proceedings.

51. The Procurator-General's Office could initiate criminal proceedings in cases of torture even in the absence of a complaint and all detention facilities were regularly inspected to assess whether they met the appropriate standards. There were no data on the

number of police officers who had been convicted of torture but there had been reports of police officers being convicted at first instance only to be acquitted in the court of appeal. In the case of Bektemir Akunov, a police officer had been found guilty of his death and had been sentenced to 3 years' imprisonment.

52. **The Chairperson** thanked the delegation for their answers and expressed the hope that due consideration would be paid to the Committee's concluding observations. Where appropriate, additional written replies could be submitted for the Committee's consideration.

53. **Mr. Khaldarov** (Kyrgyzstan) thanked the Committee for its comments and recommendations. His Government recognized the great challenges facing Kyrgyzstan and remained committed to improving the human rights situation for all citizens.

The meeting rose at 6.05 p.m.