



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 133/2018*,**

<i>Communication submitted by:</i>	R.G. (represented by counsel, Sardorbek Abdukhalilov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	10 May 2018 (initial submission)
<i>References:</i>	Transmitted to the State party on 26 September 2018 (not issued in document form)
<i>Date of adoption of views:</i>	3 November 2020
<i>Subject matter:</i>	Discrimination against a woman prisoner
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Gender-based discrimination against a prisoner; lack of gender-sensitive penitentiary facilities
<i>Articles of the Convention:</i>	1, 2 (a), (b), (d), (e) and (f), 3 and 5 (a)
<i>Articles of the Optional Protocol:</i>	None

* Adopted by the Committee at its seventy-seventh session (26 October–5 November 2020).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.



Background

1. The author of the communication is R.G., a national of Kyrgyzstan born in 1969. She claims a violation by the State party of her rights under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1, of the Convention. The Optional Protocol to the Convention entered into force for the State party on 22 July 2002. The author is represented by counsel, Sardorbek Abdukhalilov.

Facts as submitted by the author

2.1 On 27 February 2013, the local police of Maili-Say city found the body of a woman. The forensics examination concluded that she was killed by a sharp object. On suspicion of committing this crime, the police detained the author on 2 March 2013 and initiated a criminal investigation against her. The investigation concluded on 27 April 2013, and the prosecutor sent the case to court. On 26 June 2013, the author was found guilty of murder and sentenced to 15 years of imprisonment by the Maili-Say City Court.

2.2 Upon the author's appeal, the Jalalabad Regional Court overturned the trial court's verdict and sent it for additional investigation. The case was later overturned on appeals twice more, and in the end, on 3 October 2016, the author was sentenced to conditional release. During these trials in three different courts, the author was held at several different detention centres, as described below.

2.3 Detention in the Maili-Say temporary isolation ward occurred on the following dates: 2 February 2013 to 16 January 2014, 19 February to 25 June 2014, 9 October to 25 December 2014 and 17 February to 23 April 2015. There, the author was held in a small cell of about 6 m². The only window in the cell was blocked by a sheet of metal, obstructing access to natural light. During the winter, it was cold in the cell, and in the summer it was very hot. The author was not given any bedding except a dirty mattress. The toilet facilities were in the cell and were not blocked from the rest of the room. The person using the toilet was visible to everyone, including the guards, who were all men. The toilet flush did not work.

2.4 The shower facilities were not equipped with a door and the person using it was visible to male guards as well. Hot meals were served only once a day and no hot meals were provided at weekends. During her detention in this facility, the author complained 23 times about her health. Since the detention facility did not have any medical staff, on seven occasions she was taken to the Maili-Say city hospital for treatment.

2.5 Detention in the Jalalabad temporary isolation ward occurred from 26 June to 23 July 2014, from 27 December 2014 to 17 February 2015 and from 23 April to 28 August 2015. The author's cell was located in the basement, and she was not given any bedding except a dirty mattress. She had no access to television, newspapers or any other sources of information. Toilet facilities did not exist – instead, the detainees used a bucket. Sometimes, the author was taken to use the toilet facilities outside, but most of her body was visible to the male guards. The author suffered from physical and psychological discomfort and her health deteriorated as a result. She had to request medical assistance eight times in this facility.

2.6 Detention in the Tash-Komur temporary isolation ward occurred from 24 July to 8 August 2014. Here, the author was kept in a very small cell, with no natural light and no fresh air. She was given no bedding accessories except a mattress. She could not read owing to the lack of lighting, which prevented her from preparing for her court hearings. No toilet facilities existed in the cell, and everyone had to use a plastic bucket, visible to other cellmates and male guards. These factors led the author to suffer both physically and mentally, and she had to request medical assistance twice in this facility.

2.7 From 9 October to 5 December 2014 and from 17 February to 5 March 2015,¹ the author was detained in the Nookan temporary isolation ward. Here as well the author was held in a small cell with a concrete floor. No bedding was provided. The author could not read in the cell and had no access to water, television, newspapers, fresh air or natural light. In this facility, the author again had to use a bucket for her toilet needs and she was visible to male guards and other cellmates. The author submits that she needlessly suffered owing to the lack of proper conditions.

2.8 From 25 to 27 December 2014, the author was held at the Bazar-Korgon temporary isolation ward. Here, the author's complaints are identical to those listed for the other isolation wards.

2.9 The author further submits that she exhausted all available domestic remedies. From 5 June 2015, she filed several complaints with the Office of the Prosecutor of the Jalalabad region regarding the conditions of her detention. She received a reply from the Internal Affairs Department of the Jalalabad region in August 2015, which recognized that the living conditions in the detention facilities of the region were poor, but that it was impossible to change them without government funding.

2.10 On 26 November 2015, the author started civil proceedings in the Jalalabad City Court, complaining about the conditions of her detention. She claims that, as a result, her advocate received threats from the head of the pretrial detention facility in Jalalabad.² On 18 February 2016, the Court rejected her complaint on the grounds of a lack of violation of the law.

2.11 On 24 February 2016, the author appealed to the Regional Court of Jalalabad. On 7 May, the Court quashed the decision of 18 February and sent the case for new consideration by the City Court of Jalalabad. On 17 May, the City Court rejected the complaint.

2.12 On 9 June 2016, the representative of the author filed another complaint to the City Court of Jalalabad. On 27 June, the Court rejected the complaint, finding that it could not be considered within the framework of a civil procedure.

2.13 On 26 July 2016, the Regional Court of Jalalabad confirmed the decision of the City Court of Jalalabad of 27 June.

2.14 On 6 December 2016, the representative of the author appealed against the decision of 26 July within the supervisory review procedure. The Supreme Court of Kyrgyzstan refused to re-examine the lower courts' decisions.

2.15 On 21 December 2015, the representative of the author complained to the Tash-Komur City Court. On 31 March 2016, the Court rejected the complaint owing to the lack of proper power of attorney for the representative.

2.16 After obtaining power of attorney, the representative of the author filed another complaint to the Tash-Komur City Court on 9 June 2016. On 20 June, the Court returned the complaints since the pretrial procedure for resolving a dispute had not been observed.

2.17 On 29 July 2016, an appeal complaint was filed to the Regional Court of Jalalabad, to no avail. On 6 December, both decisions were appealed, within the supervisory review procedure, to the Supreme Court of Kyrgyzstan, with no success.

¹ Dates as submitted by author.

² After a complaint to the Ministry of Internal Affairs and the Office of the Prosecutor in Jalalabad, the head of the pretrial detention facility was found liable for violations of service discipline.

2.18 On the basis of the above-mentioned decisions, the representative decided not to appeal against the conditions of her detention in the Maili-Say, Nookan and Bazar-Korgon temporary isolation wards and the Batken isolation ward.³

2.19 On 16 May 2017, the author filed a complaint to the Pervomaisk District Court seeking compensation for moral damages. Her complaint was rejected on 17 May. She appealed to the Bishkek City Court on 22 May and her complaint was rejected. The author claims that no further remedy exists.

2.20 The author asks the Committee to find the State party responsible for violations of the articles as indicated, and pay her just compensation commensurate with her suffering; take appropriate steps to prevent similar violations of women detainees in Kyrgyzstan; initiate effective investigations of all claims of violations of these rights in places of detention; and provide women guards to search and monitor women detainees and train such guards on the provisions of the Convention and other international norms and jurisprudence.

Complaint

3.1 The author claims that her detention in temporary isolation wards was discriminatory, in violation of articles 2 (a), (b), (d), (e) and (f), as well as articles 3 and 5 (a), read in conjunction with article 1, of the Convention. According to the official confirmation from the Ministry of Internal Affairs, these wards were staffed exclusively with male guards.

3.2 The male guards would watch the detainees, including the times when the author used the toilet, which was clearly visible to the guards. The toilets in the outside yards were blocked only by a small piece of wood, leaving most of the author's body visible.

3.3 As prescribed by law in Kyrgyzstan, all detainees, upon arrival at a detention facility, must be searched, their fingerprints recorded and their personal belongings examined. Such a search can be conducted only by guards of the same sex as the detainee. However, the author was searched by male guards, since none of the isolation wards had any women guards.

3.4 During the entire duration of her detention, the author was not given any hygienic supplies, such as tampons, sanitary pads or napkins. The author was also not able to properly wash her clothing, including underwear.

3.5 The guards insulted the author and called her various inappropriate names such as "little rose" or "*rozochka*". The guards also touched her inappropriately.⁴ The author suffered from these violations for three years, which led to a deterioration in her health. According to article 3 of the Convention, and to rule 81 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), women detainees must be guarded only by women guards.

3.6 In its general recommendation No. 19 (1992) on violence against women, the Committee expressed its view that the violence that specifically targets women constitutes a violation of article 1 of the Convention. In its decision in *Abramova v. Belarus* (CEDAW/C/49/D/23/2009), the Committee concluded that the State party violated article 1 of the Convention by not providing conditions of detention that included special measures for women detainees. In the same case, the Committee found violations of articles 1, 3 and 5 (a).

³ The author was in the Batken isolation ward from 7 to 30 September 2015.

⁴ The author provides no details.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 14 June 2019, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party recalls the facts of the case, including the circumstances of the criminal case against the author. It notes that, on 6 October 2016, the author was granted parole by decision of the Alamudun District Court.

4.3 The State party submits that in the Jalalabad temporary isolation ward the author complained about her health conditions 8 times; in the Tash-Komur temporary isolation ward, 2 times; and in the Maili-Say temporary isolation ward, 23 times. She attributed the deterioration of her health to moral suffering, inhuman conditions of detention and discrimination on the basis of gender.

4.4 The State party submits that the Maili-Say temporary isolation ward is located on the first floor of an administrative building built in 1972. It consists of an interrogation room (6.45 m²), a shower room (3.3 m²), a storage room (6 m²) and four prison cells (two of them 16.8 m², another two 6 m²). There are video cameras in the cells, the living conditions meet all sanitary and fire safety requirements and the detainees are provided with bedding and dishes. All cells are equipped with radio and ventilation; on request, the detainees can be provided with literature and table games. The employees of the sanitary-epidemiological stations conduct weekly reviews of the cells. Every year the Government allocates funds for renovation.

4.5 The State party submits that the author spent, in total, 1 year, 4 months and 12 days in the Maili-Say temporary isolation ward. During this time, the Office of the Prosecutor of Maili-Say was regularly conducting reviews and no violations of living condition standards were identified. The non-governmental organization Spravedlivost conducted several monitoring visits to the detention facility. The author did not submit any complaints in this regard. During this period, the author was provided with medical assistance when requested. Her health problems were not connected to the living and sanitary conditions.

4.6 The State party submits that, based on the author's complaint of 10 October 2014, the Office of the Prosecutor of Nookan conducted an investigation. It was established that there were six women detainees at that time. The personal searches were conducted by two women staff of the detention facility.

4.7. The State party reiterates the information about the author's attempts to appeal against the living and inhuman conditions, and discrimination on the basis of gender. It submits that, from the information presented, it can be concluded that there was no evidence that living conditions in the Tash-Komur and Jalalabad temporary isolation wards violated the author's rights to freedom from inhuman and degrading treatment, and discrimination on the basis of gender.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 13 August 2019, the author presented her comments on the State party's observations.

5.2 The author refers to two reports, published in 2013 and 2014, by the Kyrgyz National Center on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and a report of a project of the Organization for Security and Cooperation in Europe (OSCE) Centre on the prevention of torture in Kyrgyzstan, which concluded that the living and sanitary conditions in the Jalalabad, Tash-Komur, Maili-Say, Nookan, Bazar-Korgon and Batken temporary isolation wards did not meet national standards. The annual reports of the National Center for 2014, 2015, 2016,

2017 and 2018⁵ also stated that the conditions in the temporary isolation wards in the country did not meet national and international standards.

5.3 The author submits that only once was she searched by two women, who were not staff of the temporary isolation ward in Nookan. In all other temporary isolation wards the staff is composed only of men, so the author was subjected many times to personal searches conducted by the male staff.

5.4 On 5 June 2015, the author filed a complaint to the Office of the Prosecutor of Jalalabad with a request to conduct a verification of the living conditions in the temporary isolation ward. In August 2015, she received a response from the Internal Affairs Department of the Jalalabad region that the living conditions did not meet the standards since the building was very old; however, the necessary funding for renovation had not been allocated. Nevertheless, some initiatives by OSCE and the local non-governmental organizations were directed to the improvement of the living conditions in the detention facilities.

5.5 The author reiterates that she has exhausted all available domestic remedies as national legislation and practice do not allow for the possibility of bringing these kinds of complaint to court. This results in the violation of her right to effective domestic remedy.

5.6 The author submitted a copy of a third-party intervention by the World Organization against Torture and asked the Committee to take that into account. She noted that the third-party intervention listed a number of human rights standards regarding women in detention, in particular the requirement that women detainees must be supervised by women staff, the right to privacy in the context of body searches and surveillance and the right to adequate health care. These standards are set out in the revised United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the General Assembly in 2015 and supplemented by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted by the Assembly in 2010.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may examine the admissibility of the communication separately from the merits.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 With regard to article 4 (1) of the Optional Protocol, the Committee notes the author's assertion that she has exhausted all available and effective domestic remedies by bringing the conditions of her detention before the Supreme Court on two different grounds, and that this was not contested by the State party. Accordingly, the Committee considers that it is not precluded under article 4 (1) of the Convention from examining the present communication.

6.4 The Committee declares the communication admissible, as far as it raises issues under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1, of the Convention, and proceeds with its consideration of the merits.

⁵ The reports were submitted to the Committee.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, in accordance with article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claim that her detention: (a) in the Maili-Say temporary isolation ward between 2 February 2013 and 16 January 2014, 19 February and 25 June 2014, 9 October and 25 December 2014 and 17 February and 23 April 2015; (b) in the Jalalabad temporary isolation ward between 26 June and 23 July 2014, 27 December 2014 and 17 February 2015 and 23 April and 28 August 2015; (c) in the Tash-Komur temporary isolation ward between 24 July and 8 August 2014; (d) in the Nookan temporary isolation ward between 9 October and 5 December 2014 and 17 February and 5 March 2015; and (e) in the Bazar-Korgon temporary isolation ward between 25 and 27 December 2014, in poor, unhygienic and degrading conditions, in isolation wards staffed exclusively by men where she was exposed to humiliating treatment, constitutes inhuman and degrading treatment and discrimination on the basis of her sex, within the meaning of article 1 of the Convention, and constitutes a violation by Kyrgyzstan of its obligations under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1, of the Convention.

7.3 The Committee observes that the State party has not provided any clarifications on the substance of these allegations, but limited itself to a general description of the detention premises (e.g., the size of the cells, the existing equipment, furniture), including reference to single examples such as the conditions of the Maili-Say temporary isolation ward or one episode where the author was searched by women staff. In the view of the Committee, although this description may be of relevance, it does not necessarily address the substance of the author's claims, for instance that toilet facilities did not exist or were open to the extent that most of the author's body would be visible to male guards when using them. Furthermore, the State party did not comment in any way on the author's allegations that staff working in the detention facility were exclusively male and that, as a result, she was subjected to gender-based discrimination, apart from a single episode in the Nookan facility.

7.4 The Committee recalls that, in accordance with article 3 of the Convention and rule 81 of the Nelson Mandela Rules, women prisoners shall be attended and supervised by women officers. It further recalls its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, according to which discrimination against women within the meaning of article 1 encompasses gender-based violence, defining it in paragraph 6 of general recommendation No. 19⁶ as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".⁷ In accordance with paragraph 7 (b) of general recommendation No. 19, the Committee reiterates that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms", including the "right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment", constitutes discrimination within the meaning of article 1 of the Convention.

7.5 The Committee recalls that the fact that detention facilities do not address the specific needs of women constitutes discrimination, within the meaning of article 1

⁶ General recommendation No. 19 (1992) has been updated by general recommendation No. 35 (2017).

⁷ See also general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 19.

of the Convention. Thus, in line with article 4 of the Convention, principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution [43/173](#)) states that special measures designed to address the specific needs of women prisoners shall not be deemed to be discriminatory. The need for a gender-sensitive approach to problems faced by women prisoners has also been endorsed by the Assembly by its adoption, in resolution [65/229](#), of the Bangkok Rules.

7.6 In the present case, besides the poor conditions of detention, the author claims that all staff working in the detention facility were men. As a woman prisoner, she was supervised by male guards, who had unrestricted visual and physical access to her and other women prisoners. The Committee recalls in this respect that, according to rule 81 of the Nelson Mandela Rules:

- (1) In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
- (2) No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
- (3) Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

This important safeguard, based on non-discrimination against women in line with article 1 of the Convention, has been reaffirmed by the Committee in its concluding observations on the reports of States parties,⁸ as well as by the Human Rights Committee in paragraph 15 of its general comment No. 28 (2000) on the equality of rights between men and women and the report of the Special Rapporteur on violence against women, its causes and consequences (see [E/CN.4/2000/68/Add.3](#), para. 44).⁹

7.7 The Committee notes that, while in the detention facilities, the guards insulted the author, called her various inappropriate names such as “little rose” or “*rozochka*” and touched her inappropriately. Furthermore, the guards were in a position to watch her through the door peephole in the course of private activities, such as using the toilet, which was located inside the cell and was blocked from view on only one side by a screen intended to give an impression of privacy, but that did not obstruct the view of the toilet from the door, or was left completely open. These allegations have not been challenged by the State party. The Committee recalls that respect for women prisoners’ privacy and dignity must be a high priority for prison staff. The Committee considers that the disrespectful treatment of the author by penitentiary officials, namely male prison staff, including inappropriate touching and unjustified interference with her privacy, constitutes sexual harassment and discrimination within the meaning of articles 1 and 5 (a) of the Convention, as explained in general recommendation No. 35, updating general recommendation No. 19. The Committee is of the opinion that sexual harassment is a form of gender-based violence, which may be humiliating and may further constitute a health and safety problem. The Committee considers that, in the present case, the author suffered moral damages and prejudice owing to the humiliating and degrading treatment, sexual harassment and negative health consequences suffered

⁸ See, for example, the concluding observations of the Committee on the sixth periodic report of Yemen ([CEDAW/C/YEM/CO/6](#)).

⁹ See also the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 10, and [CAT/OP/27/1](#).

during detention. Accordingly, the Committee concludes that the State party failed to meet its obligations under articles 2 and 5 (a) of the Convention.¹⁰

7.8 In accordance with article 7 (3) of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations under articles 2 (a), (b), (d), (e) and (f), 3, 5 (a), 12 and 15, read in conjunction with article 1, of the Convention. The Committee refers to its general recommendation No. 35, updating general recommendation No. 19.

7.9 The Committee makes the following recommendations to the State party:

- (a) Concerning the author of the communication:
 - (i) Provide appropriate reparation, including adequate compensation, to the author, commensurate with the gravity of the violations of her rights;
 - (ii) Provide appropriate health services to address the negative health consequences suffered by the author;
- (b) In general:
 - (i) Take measures to ensure the protection of the dignity and privacy, as well as the physical and psychological safety, of women detainees in all detention facilities, including adequate accommodation and materials required to meet women's specific hygiene needs, in line with the Convention, as well as with the Bangkok Rules;
 - (ii) Ensure access to gender-specific health care for women detainees, including appropriate psychological services in prisons;
 - (iii) Ensure that allegations by women detainees about discriminatory, cruel, inhuman or degrading treatment are effectively investigated and perpetrators prosecuted and adequately punished;
 - (iv) Provide safeguards to protect women detainees from all forms of abuse, including gender-specific abuse, and ensure that women detainees are searched and supervised by properly trained women staff, in line with the Convention, as well as with the Bangkok Rules and with national law implementation and monitoring;
 - (v) Ensure that all personnel assigned to work with detainees (both men and women) receive appropriate training relating to the gender-specific needs and human rights of women detainees in line with the Convention, as well as the Bangkok Rules;
 - (vi) Formulate policies and comprehensive programmes that ensure that the needs of women prisoners are met with regard to their dignity and fundamental human rights.

7.10 In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the present views and recommendations and to have them translated into the official national languages and widely disseminated in the State party, in order to reach all sectors of society.

¹⁰ See *Abramova v. Belarus* (CEDAW/C/49/D/23/2009), para. 7.7.