



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

Distr.: General
21 December 2021

Original: English

Committee against Torture

Concluding observations on the third periodic report of Kyrgyzstan*

1. The Committee against Torture considered the third periodic report of Kyrgyzstan¹ at its 1844th and 1847th meetings,² held on 10 and 11 November 2021, and adopted the present concluding observations at its 1868th meeting, held on 26 November 2021.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure, as this allows for a more focused dialogue with the State party and the Committee. It regrets, however, that the report was submitted over a year late.

3. The Committee appreciates the constructive dialogue with the State party's delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities in 2019.

5. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including:

(a) Article 56 of the Constitution adopted in April 2021, stipulating that no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment and making torture a crime;

(b) The adoption in January 2019 of a new Criminal Code and a new Code of Criminal Procedure, which outlaw torture and ill-treatment, exclude evidence gained through torture and other ill-treatment, and establish appropriate penalties for the crime of torture;

(c) The adoption of the Protection against Domestic Violence Act, criminalizing domestic violence, in 2017;

(d) The amendments to the Criminal Code and the Family Code related to the prevention of underage marriage, in November 2016;

(e) The adoption of the penal enforcement code and the Code on Minor Offences, in April 2021.

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

¹ CAT/C/KGZ/3.

² See CAT/C/SR.1844 and CAT/C/SR.1847.



6. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection for human rights and apply the Convention, in particular:

- (a) The adoption of the Human Rights Action Plan (2019–2021);
- (b) The adoption of an action plan in 2019 to bring legislation in line with the codes adopted as part of the judicial and legal reform currently under way;
- (c) The adoption of the National Plan of Action for Achieving Gender Equality (2018–2020);
- (d) The establishment of 17 private crisis centres and 1 State municipal-level crisis centre, providing material, health and legal assistance to women who are victims of violence;
- (e) The adoption of the national action plan on the prevention of child abuse and violence against children (2015–2017);
- (f) The establishment of the Coordination Council on Juvenile Justice and the development of a database to identify children at risk of violence;
- (g) The establishment of a programme for the development of the justice system for children aged 14 to 18 years (2014–2018);
- (h) The establishment of a programme on child protection (2018–2028) and a related government action plan (2020–2024);
- (i) The establishment of 78 telephone hotlines in all internal affairs agencies to receive information about instances of child abuse and violence against minors;
- (j) The establishment of the programme to combat trafficking in persons (2017–2020) and the plan of action for its implementation;
- (k) The development of rules on the medical documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment; the adoption in January 2021 of the action plan on the implementation of the principles of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); and the creation of an inter-agency working group on the implementation of the Istanbul Protocol.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. In its previous concluding observations,³ the Committee requested the State party to provide follow-up information on measures taken to implement its recommendations relating to impunity for, and failure to investigate widespread acts of torture and ill-treatment;⁴ the definition and criminalization of torture;⁵ and the national human rights institution.⁶ Although the Committee's Rapporteur for follow-up to concluding observations sent a reminder to the State party on 8 December 2014, the Committee has received no response from the State party. The Committee considers that the recommendations in paragraphs 7, 8, 10 and 14 of the previous concluding observations have not been implemented (see paras. 9, 11, 13 and 25 below).

Definition and criminalization of torture

8. With reference to its previous concluding observations,⁷ the Committee takes note of the delegation's assertion that article 305 (1) of the Criminal Code and its definition of torture does not limit criminal responsibility to public officials only, but is applied to any person

³ CAT/C/KGZ/CO/2, para. 29.

⁴ Ibid., paras. 7–8.

⁵ Ibid., para. 10.

⁶ Ibid., para. 14.

⁷ Ibid., para. 10.

who commits a crime of torture. The Committee notes with concern that the State party's legislation does not exclude the application of presidential pardons to the crime of torture. In that regard, the Committee reiterates its view that amnesties and pardons for torture are incompatible with the obligations of States parties to ensure the absolute and non-derogable nature of the prohibition of torture, as outlined in the Committee's general comment No. 2 (2007) on the implementation of article 2 and its general comment No. 3 (2012) on the implementation of article 14 (arts. 1–2 and 4).

9. **The State party should:**

- (a) **Bring the content of article 305 (1) of the Criminal Code into conformity with all the elements contained in article 1 of the Convention;**
- (b) **Eliminate the possibility of granting pardons to persons found guilty of committing acts of torture.**

National human rights institution

10. The Committee regrets that, despite its previous concluding observations,⁸ the Office of the Ombudsman is still not fully in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and that the Ombudsman (Akyikatchy) Act still establishes that the Ombudsman may be removed from his or her post if the annual report is not approved. The Committee notes information that a new law on the Ombudsman, which amends, inter alia, the procedure for the election and dismissal of the Ombudsman, and the legal status and competence of the office, has been drafted and is under consideration in parliament. Nevertheless, the Committee regrets that the draft bill has been before the parliament since 2017 (arts. 2, 11 and 13).

11. **The State party should take the necessary measures to strengthen the mandate and independence of the Office of the Ombudsman in line with the Paris Principles, and ensure sufficient financial and human resources to enable it to carry out its mandate independently and effectively.**

National preventive mechanism

12. Despite general efforts to promote the National Centre for the Prevention of Torture, the Committee considers that there are obstacles that impede its effective functioning. It notes with concern that the special provision in the Criminal Code (art. 146-2) that penalized any obstruction of the exercise of authority by the Coordinating Council on Human Rights or by the National Centre was repealed. It also regrets that the National Centre has not fulfilled its mandate by conducting envisioned visits, especially during the pandemic, mainly due to a lack of human and budgetary resources, in particular in the regional offices. The Committee takes note of the delegation's assertion that the lack of staff and insufficient budgetary resources has been addressed in the bill for the draft budget for 2022, and that the budgetary resources allocated to the National Centre will be increased (art. 2).

13. **The State party should:**

- (a) **Reintroduce article 146-2 into the Criminal Code and ensure that any obstruction of or interference in the work of the National Centre for the Prevention of Torture is effectively investigated, and that those responsible are brought to justice;**
- (b) **Ensure that the National Centre for the Prevention of Torture has the necessary financial, human and material resources to carry out its mandate effectively throughout the country, has unhindered access to all places of deprivation of liberty and is able to hold confidential meetings with detainees and follow up on its findings and recommendations with the relevant authorities.**

Fundamental legal safeguards

14. The Committee reiterates its concern that all persons deprived of their liberty, especially those held in pretrial detention, do not enjoy, in practice, all the fundamental legal

⁸ Ibid., para. 14.

safeguards from the very outset of their deprivation of liberty. The Committee is concerned at reports that detainees do not have timely access to a lawyer – in many cases not until their trial; at the low number of lawyers on the State Guaranteed Legal Aid roster and their unavailability in remote areas; and at the lack of access to quality legal aid. Furthermore, the shortage of meeting rooms in temporary holding facilities (IVS) and pretrial detention centres (SIZO) has created long waiting lists for lawyers to meet their clients. While welcoming the reports that a large number of prison medical staff have been trained on the Istanbul Protocol, the Committee is concerned by allegations that some examinations are conducted superficially, sometimes with delay, and by non-medical staff of the pretrial detention facilities. Lastly, the Committee notes with great concern that minors undergo initial questioning in the absence of their lawyers, parents or other trusted persons (arts. 2, 11–13 and 15–16).

15. **Recalling its previous recommendation,⁹ the Committee recommends that the State party ensure that all persons who are arrested or detained, including minors, are afforded in practice all the fundamental legal safeguards against torture from the very outset of their deprivation of liberty, including the right to have prompt access to a lawyer or, if necessary, to free legal aid, particularly during the investigation and interrogation stages, the right to request and promptly receive a medical examination by a qualified professional after admission to a place of detention and the right to have access to an independent physician upon request. The State party should provide information on the number of complaints received regarding failure to respect fundamental legal safeguards and on the outcome of such complaints in its next periodic report to the Committee.**

Duration of pretrial detention

16. While taking note of the guarantees set forth in article 59 (4) of the Constitution and article 45.1 (11) of the Code of Criminal Procedure, the Committee is concerned that the limit of 48 hours within which those arrested have to be brought before a judge starts from the moment they are taken to a police station, and not from the very outset of their deprivation of liberty. Furthermore, the 48-hour period may be extended if the investigators and prosecutors present justifications for additional investigation. The Committee is concerned that, in connection with coronavirus disease (COVID-19) regulations, detention periods have been extended without any assessment of the situation of detainees. According to information before the Committee, a large number of detainees were unlawfully held in temporary holding facilities for the whole period of their pretrial detention in some provinces, especially in Jalal-Abad Province, when they should have been transferred to a pretrial detention centre. The Committee considers that prolonged detention of a person in temporary holding facilities may amount to cruel, inhuman and degrading treatment. The Committee welcomes the information provided by the State party's delegation that the new Code of Criminal Procedure, which will enter into force in December 2021, will provide that the maximum time in pretrial detention facilities should not exceed one year, and after that an accused should be subject to immediate release (arts. 2, 11 and 16).

17. **The State party should:**

- (a) **Ensure that the period of custody before being brought before a judge does not exceed 48 hours;**
- (b) **Ensure, in law and in practice, that pretrial detention is used as a measure of the last resort;**
- (c) **Consider replacing pretrial detention with non-custodial measures.**

Violence against women, including bride kidnapping

18. While welcoming various initiatives to combat all forms of violence against women, the Committee is concerned at the continued high prevalence of violence against women, in particular domestic violence, and at the very low number of investigations into such cases.

⁹ Ibid., para. 9.

Law enforcement agencies and the judiciary continue to fail to effectively investigate complaints of violence against women and to punish perpetrators. Moreover, only 944 of the 9,025 cases of domestic violence reported in 2020 have been brought before a court. The Committee is also concerned that amendments to the Code of Criminal Procedure adopted in 2021 render domestic violence an administrative offence. While noting that articles of the Criminal Code strengthen penalties for bride kidnapping, which is treated as a serious crime, the Committee remains concerned about the persistent abduction of women and girls for forced marriages. It would appreciate an update on the additional measures taken in this regard and on their effectiveness (arts. 2 and 16).

19. The State party should:

(a) **Ensure that all cases of violence against women, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims or their families receive redress, including adequate compensation;**

(b) **Consider establishing an effective and independent complaints mechanism for victims of domestic violence;**

(c) **Ensure that victims of violence against women benefit from protection, including restraining orders, and have access to medical, social and legal services, including psychological counselling, redress, rehabilitation, safe and adequately funded shelters throughout the country and assistance in finding other accommodation;**

(d) **Ensure that law enforcement personnel, judicial authorities and medical and social workers are provided with appropriate training to deal with such cases;**

(e) **Enhance awareness-raising efforts to sensitize the public to such phenomena.**

Trafficking in persons

20. While welcoming measures taken by the State party to combat trafficking in persons, including amendments to the Criminal Code to provide tougher sentences for such crimes, the Committee is concerned at continuing reports of the trafficking of Kyrgyz nationals and foreigners in and outside the country, and at the poor implementation of existing legislation and strategies to prevent it, as well as the lack of measures to address the root causes of this phenomenon and the scarcity of shelters for victims, especially girls and women (arts. 2 and 16).

21. The State party should:

(a) **Continue taking measures to prevent and eradicate trafficking in persons, including vigorous enforcement of anti-trafficking legislation, and provide sufficient funds for the implementation of the plan of action to combat trafficking in persons;**

(b) **Promptly, effectively and impartially investigate, prosecute and punish the crime of trafficking in persons, while ensuring the necessary procedural guarantees and providing assistance to victims in reporting such incidents to the police;**

(c) **Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters;**

(d) **Provide mandatory and continuous training on the prevention of trafficking to judicial and law enforcement personnel.**

Conditions of detention

22. While appreciating the measures taken by the State party to renovate certain detention facilities and build additional facilities for prisoners serving life sentences, the Committee remains concerned at reports of inadequate and deplorable conditions of detention, including overcrowding. The Committee is also concerned at the appalling conditions at women's detention facilities and the lack of adequate medical care for women detainees, including those who are pregnant and mothers with children. The Committee is further concerned at

reports of very poor conditions that prevail in psychiatric hospitals, social care homes and residential institutions for children (arts. 11 and 16).

23. **The Committee urges the State party to:**

(a) **Intensify its efforts to improve conditions of detention and alleviate the overcrowding of penitentiary institutions, including through the application of non-custodial measures. In that connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and recommends that the State party, inter alia, ensure that detainees are provided with adequate material and hygienic conditions, including sufficient natural and artificial light; adequate sewerage systems and sanitary installations, including toilets and showers; heated cells; sufficient ventilation; an adequate quality and quantity of food, bedding, blankets and items for personal hygiene; health care; outdoor activities; and family visits;**

(b) **Ensure a sufficient number of medical doctors and psychiatrists in all places of deprivation of liberty;**

(c) **Ensure adequate conditions and a sufficient number of female staff in detention facilities for women;**

(d) **Improve conditions in psychiatric hospitals, social care homes and institutions for children.**

Investigation of acts of torture and ill-treatment

24. The Committee is deeply concerned at reports of numerous cases of torture and ill-treatment of persons deprived of their liberty, in particular reports of persons in police custody who have been tortured or ill-treated by law enforcement officials. The Committee remains seriously concerned at the very low proportion of criminal investigations opened into such allegations compared with the number of complaints received, and the very low number of cases where State officials have been prosecuted, convicted and sentenced to imprisonment. According to the information provided by the State party, between 2012 and the first six months of 2021 courts had found 18 officials guilty of torture, with 12 serving prison sentences. Another issue of concern is the transfer of the power to investigate cases of torture from the Prosecutor's Office to the State Committee on National Security, which acts under the law on State secrets. The Committee noted the information that this function has recently been partially transferred back to the Prosecutor's Office. Furthermore, the Committee is concerned at reports of police harassment, arbitrary arrest, ill-treatment and torture perpetrated against lesbian, gay, bisexual and transgender persons that have not been investigated. The Committee regrets that no reparation mechanism for acts of torture and ill-treatment has been established and that, in practice, victims of torture do not receive fair and adequate restitution, compensation and rehabilitation for acts of torture and ill-treatment (arts. 2 and 10–16).

25. **Recalling its previous recommendation,¹⁰ the Committee recommends that the State party:**

(a) **Ensure that prompt, independent, impartial and effective investigations are undertaken into all allegations relating to torture and ill-treatment by law enforcement officers, including against lesbian, gay, bisexual and transgender persons, and ensure that the perpetrators are prosecuted and the victims are adequately compensated and rehabilitated;**

(b) **Ensure that the authorities launch investigations whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;**

¹⁰ Ibid., paras. 5–6.

(c) **Ensure that, in cases of alleged torture or ill-treatment, suspected perpetrators are suspended from duty immediately and for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;**

(d) **Compile and provide the Committee with information on redress and compensation measures, including means of rehabilitation, ordered by the courts or other bodies in the State party that have been provided to victims of torture or ill-treatment, including the amounts paid.**

Retaliation against human rights defenders and journalists

26. The Committee is concerned about reports that journalists face intimidation, including threats of violence and harassment, from wealthy and politically well-connected non-State actors for reporting on alleged corruption. Radio 3 Europe, for example, was obliged to relocate some of its journalists to Prague because of serious threats following their reporting on the corruption of former senior public officials. The Committee regrets the lack of information about any investigation into an incident involving Aibol Kozhomuratov, a producer at Current Time TV, who tweeted a clip showing a law enforcement officer shooting a weapon at him while he was reporting. Regarding the case concerning the death in custody of the human rights defender Azimjan Askarov, in 2020, the Committee takes note of the information provided by the delegation that national security organs are conducting their own investigation. It regrets, however, that the courts have denied his widow the right to compensation, as she could not be named as successor in the legal proceedings, and, moreover, that the issue of redress could not be considered until the case into Askarov's death was closed. The Committee also regrets that article 417 of the Code of Criminal Procedure hampers victim's rights to redress from a civil court until a criminal court has convicted the perpetrators. The Committee further regrets that the State party did not provide information on any plans to allow the relatives of a victim of torture to claim adequate and fair compensation (arts. 2, 12–13 and 16).

27. The State party should:

(a) **Ensure that human rights defenders and journalists are able to conduct their work and activities freely in the State party, without fear of reprisals or attack;**

(b) **Investigate promptly, thoroughly, independently and impartially all violations committed against human rights defenders and journalists and punish appropriately those found guilty;**

(c) **Review its legislation to allow victims of torture to pursue civil claims for redress, even if the criminal case is ongoing or has not resulted in a conviction, in line with the Committee's general comment No. 3 (2012).**

Violence against children

28. Although corporal punishment of children is unlawful in schools, the penal system and certain care settings, the Committee is concerned at allegations that a large number of children experience violence, abuse or neglect in both family and institutional care settings. According to the information before the Committee, monitoring of residential children's institutions carried out in 2019–2020 revealed the ineffectiveness of the system for the prevention of violence, ill-treatment and torture. Children were not aware of the prohibition on violence against them and there appeared to be no mechanisms in residential children's institutions for them to report it (art. 16).

29. The State party should:

(a) **Explicitly prohibit corporal punishment of children in all settings, including at home, in institutions and in alternative care settings, and ensure awareness-raising and public education measures are in place;**

(b) **Provide information to the Committee on any mechanism for complaints against the use of violence in residential institutions for children, whether any**

investigations have been carried out in such establishments and what measures exist to prevent such violence.

Refugees and asylum seekers

30. While welcoming the implementation of measures to improve the situation of stateless persons, the Committee notes with concern that some of the provisions in the national legislation may give rise to violations of the principle of non-refoulement, since they do not explicitly recognize this principle for the duration of the asylum proceeding and provide for the expulsion of persons. In this connection, it takes note of the delegation's responses regarding the cases of Bobomurod Abdullayev and Murat Tungishbaev, and steps being taken to investigate the case of Orhan Inandi (arts. 3 and 16).

31. The State party should ensure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture or ill-treatment.

Training

32. While noting various human rights training programmes for public officials and judges, the Committee regrets: (a) the insufficient level of practical training on the provisions of the Convention for law enforcement officers and the judiciary; (b) the lack of specific training to detect signs of torture and ill-treatment for medical personnel dealing with detainees; and (c) the lack of information on the impact of existing training programmes on the prevention of the offences of torture or ill-treatment. Moreover, the Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact in terms of reducing the number of cases of torture and ill-treatment of the training and educational programmes on the Convention for law enforcement personnel and other public officials. It is also concerned that training on the Istanbul Protocol is not provided to all medical professionals dealing with persons deprived of liberty (art. 10).

33. The State party should:

(a) **Further develop mandatory initial and in-service training programmes to ensure that all public officials are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;**

(b) **Continue to ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol;**

(c) **Develop a methodology for assessing the effectiveness of training programmes and adjust them in conformity with the professional training needs of the above-mentioned officials.**

Data collection

34. The Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, military and prison personnel, as well as on cases of domestic, sexual and gender-based violence, violence against lesbian, gay, bisexual and transgender persons, and trafficking.

35. The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including statistics disaggregated, inter alia, by age, gender, ethnicity, crime and geographical location, on complaints, investigations, prosecutions and convictions related to cases of torture and ill-treatment, domestic, sexual and gender-based violence, trafficking in persons and violence against children, and the outcomes of all such complaints and cases, including on means of redress.

36. The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

37. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.

38. The Committee requests the State party to provide, by 3 December 2022, information on follow-up to the Committee's recommendations on the national preventive mechanism, violence against women, including bride kidnapping, and investigation of acts of torture and ill-treatment (see paras. 13, 19 and 25 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

39. The Committee requests the State party to submit its next periodic report, which will be its fourth, by 3 December 2025. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to this list of issues will constitute its fourth periodic report under article 19 of the Convention.
