



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

Distr.: General
9 December 2013
English
Original: French

Committee against Torture

Fifty-first session

Summary record of the first part (public)* of the 1192nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 12 November 2013, at 10 a.m.

Chairperson: Mr. Grossman

Contents

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

Second periodic report of Kyrgyzstan

* The summary record of the second part (closed) of the meeting appears as document
CAT/C/SR.1192/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.13-48511 (E) 061213 091213



* 1 3 4 8 5 1 1 *

Please recycle



The meeting was called to order at 10.05 a.m.

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

Second periodic report of Kyrgyzstan (CAT/C/KGZ/2; CAT/C/KGZ/Q/2; HRI/CORE/KGZ/2008)

1. *At the invitation of the Chairperson, the delegation of Kyrgyzstan took places at the Committee table.*

2. **Mr. Khaldarov** (Kyrgyzstan) providing an overview of the main developments since the end of 2011, said that the recognition, at the highest level, of the existence of torture in Kyrgyzstan testified to the determination of Kyrgyzstan to eradicate the phenomenon in all its forms. In recent years, significant steps had been taken, especially in the legislative sphere, in order to attain that goal. Kyrgyzstan had adopted a national strategy to promote sustainable development for 2013–2017, an important element of which concerned human rights. At the time, several working groups established by presidential decree were dedicated to harmonizing domestic legislation, including criminal legislation, with international norms. In 2012, the definition of torture set forth in article 350-1 of the Criminal Code had been brought into line with article 1 of the Convention and the penalties applicable had been made more severe. Henceforth, torture ranked as a severe or particularly severe offence. In addition, the Code of Criminal Procedure had been supplemented by a provision whereby proceedings in cases involving torture could not be discontinued if the victims refused to testify in support of their allegations.

3. In June 2012, the national centre for the prevention of torture and other cruel, inhuman or degrading treatment or punishment had been set up as an independent body, whose role was to serve as the national mechanism for the prevention of torture; the centre comprised an Ombudsman, two deputies and eight human rights defenders. It was authorized to visit places of detention without notice and submitted its recommendations to the appropriate authorities. It was in direct contact with the Subcommittee, with whom it exchanged information on matters connected with torture and ill-treatment.

4. The Government had recently adopted an ordinance establishing the coordinating council for human rights, which comprised officials from all the relevant public agencies and possessed wide-ranging powers in the sphere of human rights. It was also on the point of completing examination of the draft plan of action to implement the recommendations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his report on his visit to Kyrgyzstan in December 2011 (A/HRC/19/61/Add.2). The project, which had been reviewed by the public agencies concerned and by representatives of civil society and international organizations, provided for the introduction of new provisions into the law on the procedure for and conditions of detention of suspects and accused persons; under the provisions, censorship of letters from suspects held in custody to their defending counsel, members of parliament, the Ombudsman or international human rights bodies would be completely banned.

5. Closed-circuit television cameras had been installed in all temporary detention facilities (IVS), pretrial detention centres (SIZO), corridors in police stations and the offices of police inspectors. CCTV recordings could be neither altered nor destroyed and only the procurator responsible for the case could view them. In 2012, the memorandum on cooperation for the protection of human rights and freedoms signed by the Ombudsman, the office of the Procurator-General, the Ministry of the Interior, the Ministry of Health, the Ministry of Justice, the prison administration and the Organization for Security and Cooperation in Europe (OSCE) had come into force. The signatories to the agreement were authorized to visit without notice all places of detention in the country in order to ensure that human rights norms, including those of the Convention, were complied with.

6. On account of the human rights violations that had occurred in the past, in particular during the events of 2010, radical reforms had been launched to ensure the fair administration of justice. In 2012, a development strategy for the departments of the procurator's office for the period 2012–2015 had been adopted and the role of the office in protecting rights and freedoms and in combating torture and ill-treatment had been strengthened. In addition, the Procurator-General had issued three ordinances on efforts to combat torture and issued recommendations for procurators on the appropriate methods to be used in investigations into cases involving torture and monitoring of temporary holding facilities. The departments of the procurator's office conducted systematic surprise inspections of various detention centres, including police stations, cells holding persons detained for administrative offences, temporary holding facilities operated by the Ministry of the Interior and pretrial detention centres. They were under the obligation to take immediate action whenever any acts of torture were reported to them and, if necessary, immediately to launch criminal proceedings. He pointed out that the number of complaints of torture lodged between January and September 2013 had fallen by 31.5 per cent in comparison with the same period in 2012.

7. In May 2012, the development strategy for the prison system for 2012–2016 had been adopted. Its objectives were to bring the system into line with international standards, to improve conditions of detention and to facilitate the social reintegration of prisoners. Prison rehabilitation work had been carried out in certain temporary holding facilities, with the assistance of international organizations. However, on account of the budgetary constraints affecting the country, it had been necessary to suspend new prison building.

8. In August 2013, a standard form for medical examinations of detainees had been approved. The form was based on the Istanbul Protocol and was to be completed by physicians after they had examined prisoners transferred to a pretrial detention centre in order to detect any signs of bodily injury or psychological trauma. In the same year, the State programme for the development of the judicial system (2013–2017) had been approved; one of its main objectives was to restore society's confidence in the courts. In June of that year, amendments had been made to the regulations applicable to the personnel of the Ministry of the Interior to ensure that officials found guilty of acts of torture were dismissed even if the charges against them were settled by mutual agreement.

9. Since 2011, Kyrgyzstan had been visited by the United Nations High Commissioner for Refugees, the Subcommittee, the Special Rapporteur on torture and by other special procedures mandate holders. Kyrgyzstan was a party to seven of the nine principal human rights instruments and was at the time examining the possibility of ratifying the Convention on the Rights of Persons with Disabilities.

10. **Mr. Tugushi** (Country Rapporteur) noted with satisfaction that the definition of torture contained in the Criminal Code had been amended and that penalties to punish torture had been made more severe. He asked whether all the deficiencies of the former definition, including the absence of discrimination as one of the grounds constituting torture, had been made good. He asked what was being done to remedy the problem of the paucity of prosecutions brought by the procurator's office under article 305 of the Criminal Code, to which some sources had drawn attention, and how the authorities had responded to the serious allegations that some methods of torture (electric shocks, beatings, suffocation, exposure to extreme temperatures and threats against relatives) were used by the police to force suspects to confess.

11. He noted that the procurator's office was the only agency responsible for investigating cases involving torture and enquired whether more presumed torturers had been brought before the courts since the introduction of the reform. According to the information available to the Committee, the security forces told suspects that they could inform their relatives of their arrest only after a period of 12 hours, and family visits

required authorization from the procurator or a court. He invited the delegation to indicate whether the State party intended to take any steps to permit suspects immediately to inform their relatives of their arrest and to relax the visiting requirements. He would also appreciate information on whether the State party intended to draft a bill on the bar and to introduce measures to guarantee the right of suspects to contact a lawyer as soon as they were taken into custody.

12. According to information submitted to the Committee, suspects were allegedly held in custody for months because of the lack of facilities. He invited the delegation to indicate whether the State party intended to do anything to remedy the situation. Several sources had indicated that the administration of the pretrial detention centres refused to accept detainees with injuries caused by violence and sent them back to the police station from where they had come until their injuries had disappeared. He asked the delegation whether any investigations had been made into those allegations. He also asked the delegation to comment on the claims that minors were not held separately from adults in certain temporary holding facilities and to state whether the authorities intended to do anything to improve conditions of detention in the pretrial detention centres and prison colonies, where conditions amounted to inhuman and degrading treatment, especially in the wings for convicts serving life sentences. The delegation could also specify in that regard whether any measures had been or were to be adopted to remedy the appalling medical care and shortage of drugs in the central hospital of No. 47 penal colony in Bishkek.

13. Lastly, he asked whether the law on the Ombudsman could be brought into line with the Paris Principles and whether there were any plans to assign sufficient resources to the national centre for the prevention of torture to enable it fully to perform its role as the national preventive mechanism.

14. **Ms. Gaer** (Country Rapporteur) said that she would appreciate further information on certain aspects of the delegation's oral presentation. Since the practice of torture had been acknowledged at the highest level, she would like to know when an official statement to that effect had been made. She also requested examples of the application of the new provision of the Criminal Code whereby proceedings initiated against a State official suspected of torture could no longer be discontinued, even if the victim refused to testify. She also asked how many visits had been made by the national centre for the prevention of torture since its establishment; what measures had been taken to ensure that detainee's correspondence was no longer censored; how it was possible to account for the considerable reduction in the number of complaints filed concerning torture between 2012 and 2013 and how many agents of the Ministry of the Interior found guilty of torture had been dismissed since the new regulations had come into effect in June 2013.

15. She asked the delegation to indicate whether any statutory limitation applied to the crime of torture under Kyrgyz law. According to figures for the period covered by the report, only five police officers had been prosecuted for acts of torture or ill-treatment on the basis of article 305-1 of the Criminal Code, and they had been given only suspended sentences. It would be interesting to know whether non-suspended prison sentences had been handed down by the courts under that article. The State party had also indicated that six persons had been sentenced to prison for having infringed the provisions of article 305, paragraph 2 of the Criminal Code. She asked the delegation to indicate whether the persons in question had been police officers and the length of the prison sentences. The delegation might also indicate whether it was the intention of the State party to ensure that the perpetrators of torture and ill-treatment were no longer prosecuted merely for "abuse of authority" but for the acts they had actually committed. In that connection, it would be interesting to know whether A. Chalbaev, an officer of the Central Criminal Investigation Department, who had been prosecuted for having committed a crime covered by article 305, paragraph 2 of the Criminal Code (abuse of authority with the use of physical violence

and special equipment), had been convicted, and if so, to what sentence. She would also appreciate updated information on the state of advancement of the procedures in the cases involving Osmjonjon Kholmurzayev and Esen Mombekov, who had died in custody, and on the reopening of the case concerning Bektemir Akunov, who had been found dead on 15 April 2007 in a cell at the Naryn temporary detention centre.

16. In his report on his mission to Kyrgyzstan, the Special Rapporteur on torture had observed that although Kyrgyz law offered various remedies in case of torture, the complaints mechanisms were neither independent nor effective. In most cases, complaints were allegedly addressed to the very body for which the official concerned worked. She asked the delegation to indicate whether there were any plans to set up a complaints department that was independent from the Office of the Procurator-General and what steps the State party had taken to ensure that complaints concerning torture and ill-treatment remained confidential and to protect complainants, especially those who were also detainees. The delegation might also provide an explanation for the gap between the number of complaints filed for acts of torture and ill-treatment and the number of investigations to which they had given rise, and indicate whether the State party planned to set up an independent investigatory mechanism. She asked whether the national centre for the prevention of torture, which was competent to examine complaints of acts of torture and ill-treatment, would also be able to receive complaints, initiate proceedings and follow them up.

17. It would also be interesting to know why the authorities had refused to carry out an investigation into the complaint lodged by Azimjan Askarov for acts of torture, which seemed fully substantiated. The Office of the Procurator-General had indicated that it was to examine 995 criminal cases involving acts of torture and ill-treatment committed during the ethnic violence which had occurred in Osh in June 2010, in order to ensure that the proceedings were in conformity with national legislation. It would be very valuable for the Committee to be informed of the outcome of that re-examination. She would also appreciate up-to-date information on the criminal investigation into the death in custody of Hairulla Amanbaev and on the action taken in response to the complaint lodged by Zulhumor Tohtonazarova for acts of torture and ill-treatment. She would also like to know whether any steps had been taken to investigate all the allegations of torture and ill-treatment in the *Nargiza Turdieva* case and whether the delegation could confirm the allegations that Dilmurat Khaidarov, a lawyer of Uzbek origin, had been threatened and suffered reprisals on account of his work on behalf of human rights. She also invited the delegation to indicate whether any measures had been taken to protect lawyers, in particular those who defended persons of Uzbek origin, plaintiffs and witnesses, and to comment on the fact that parliament was considering a bill on “foreign agencies” and an amendment to the law on high treason; such texts could be used to put pressure on non-governmental human rights organizations and to threaten them.

18. She invited the delegation to give examples of recent cases in which the courts had set aside confessions on the grounds that they had been obtained by torture and to indicate what measures had been taken to combat the widespread corruption within the judiciary. Information on whether it was planned to abolish the power of parliament to dismiss judges by a two-thirds majority and, more generally, to enhance transparency in the appointment of judges would be appreciated. The delegation might inform the Committee whether it was true that Kyrgyzstan had only one centre for the rehabilitation of torture victims, which was run by a non-governmental organization, and what measures had been taken to ensure that the victims of torture or ill-treatment obtained redress in the form of compensation and rehabilitation. She would also like to know whether the State party had taken any action in response to the Views of the Human Rights Committee, in particular in the *Moidunov* case (communication No. 17565/2008), and whether the findings of treaty bodies could be considered as constituting “new facts” that justified the reopening of procedures.

19. Domestic violence was reportedly commonplace in the State party. She would like to know what steps had been taken to ensure that the police were more willing to act in response to such acts and to treat them as actual human rights violations, and whether the delegation had any data on the number of prosecutions and of convictions handed down for acts of domestic violence since the publication of the report. The Committee would also be interested to know how many temporary banning orders had been issued and how many people had been convicted for failing to comply with them. She also asked the delegation to indicate how many complaints concerning sexual violence or rape had been lodged with the police following the inter-ethnic incidents in Osh. According to some sources, Uzbek women had been the victims of collective rapes, and further information on the incidents was necessary. The Committee would also appreciate details of the measures taken to combat abductions of young girls for marriage and on their effectiveness.

20. **Ms. Belmir** said that she was concerned by the fact that judges did not give due importance to complaints concerning acts of torture or ill-treatment and that during proceedings concerning such acts, only the medical reports prepared at the request of the office of the procurator were taken into account. She asked the delegation for its comments in that respect.

21. **Mr. Bruni** asked why discrimination did not appear as one of the grounds for torture referred to in the new definition of torture adopted by the State party, despite being a key element in the definition set forth in article 1 of the Convention. He would like to know what action had been taken in response to the recommendation made by the Special Rapporteur on torture that a high-level commission should be appointed to inspect all detention centres with the aim of closing down immediately all facilities that were declared unfit for human habitation. He also wished to know whether it was planned to bring temporary detention centres under the authority of the service responsible for the enforcement of sentences and whether any measures had been taken or were to be taken to increase the area per detainee in temporary detention centres.

22. **Mr. Gaye** said he would like to know whether the procedure for monitoring the lawfulness of detention came into play from the beginning of custody and whether persons placed in custody could ask to be examined by a physician of their choice. He noted from paragraph 16 of the report that arrested persons had the opportunity to be defended by a lawyer or to have the qualified legal assistance of a lawyer from the actual moment of arrest, and asked what the State party actually meant by "arrest". He would also appreciate clarification of the figures provided in paragraph 37, which did not tally, and of the reasons why only five complaints relating to violence, bodily injury and torture had led to criminal proceedings. Lastly, he asked whether any measures had been taken to implement article 2, paragraph 3 of the Convention and whether police officers were protected against possible reprisals if they refused to carry out an order from a superior.

23. **Mr. Domah** said that the legislation on access by all persons deprived of their liberty to a lawyer was complicated. He would like to know how the right of access to a lawyer during custody applied in practice, whether judges had received training on article 15 of the Convention and whether it had actually been applied by the courts. Lastly, he asked the delegation to indicate whether the State party intended to make the declaration provided for in article 22 of the Convention.

24. **Ms. Sveaass** said that she would like to know what measures had been taken to combat violence against children and whether the State party planned completely to prohibit corporal punishment. According to some sources, children placed in foster homes were the victims of acts of torture and ill-treatment. It would be interesting to know whether there were any plans to introduce mechanisms to enable them to lodge complaints. More generally, she asked whether any urgent measures were planned to improve the situation in children's psychiatric hospitals.

25. **Mr. Wang** Xuexian asked whether the State party planned to evaluate the results of the numerous legislative, judicial and administrative reforms carried out with a view to determining their efficacy in ensuring the implementation of the Convention. He also requested details of the remit and operation of the recently-established coordinating council for human rights.

26. **Mr. Mariño Menéndez** asked, in the light of the persecution of numerous journalists, whether the State party had a law governing the activity of the media. He would also like to know whether the decisions of the Office of the United Nations High Commissioner for Refugees (UNHCR) granting refugee status were legally enforceable and whether the courts could exercise control over measures of expulsion and extradition.

27. **The Chairperson** said that according to a non-governmental source, 87 cases in which police officers had been accused of torturing detainees in order to obtain confessions or cash in exchange for their release had been reported between January and September 2012. He asked the delegation for information on that matter and on the action taken in response to the acts of torture of which Azimjan Askarov and Djaiylov Talasbek had been the victims at the hands of the police. With regard to access to the assistance of a lawyer, he understood that the various administrative formalities that a lawyer had to comply with in order to visit a client in detention no longer applied, although he would appreciate confirmation of that. He would also like to know what had been the fate of Shukhrat Musin, who had been granted refugee status by UNHCR and who had disappeared in Bishkek, where he had been living pending his resettlement in a third country. He asked the delegation also to indicate whether the Code of Professional Ethics for staff of the internal affairs agencies addressed torture and provided for penalties for officials who committed acts of torture.

28. **Mr. Tugushi** (Country Rapporteur) asked whether the State party had any plans to renovate the psychiatric hospitals whose state of disrepair made it impossible to guarantee living conditions that were in conformity with international standards. He also wished to know whether the State party intended to authorize publication of the report of the Subcommittee on its recent visit to Kyrgyzstan and what measures it intended to adopt to put an end to the violence against LGBT persons and sex workers by the members of the security forces.

29. **Ms. Gaer** (Country Rapporteur) asked whether the deaths of detainees on account of the deplorable infrastructure and sanitation in some temporary detention centres had ever given rise to prosecutions for negligence against those responsible for the establishments. She would also like to know what action had been taken in response to the recommendations made by the Special Rapporteur on torture that the State party should adopt legislation to ensure that no statements obtained under torture could be used in evidence in any procedure and that anyone convicted on the basis of such statements should be acquitted and released. According to Amnesty International, in recent years abductions of asylum seekers by members of the security forces for unlawful deportation had increased in Central Asia, suggesting that the countries in the region had set up a joint programme in that sphere. She asked the delegation to comment on that information and to indicate what measures had been taken to monitor the situation of people after their transfer. She also invited the delegation to explain why, in April 2013, the State national security committee had turned down 48 applications for Kyrgyz nationality submitted by refugees.

The first part (public) of the meeting rose at 12.10 p.m.