

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/KGZ/CO/2)

KYRGYZSTAN

(...)

C. Principal subjects of concern and recommendations

(...)

Impunity for, and failure to investigate, widespread acts of torture and ill-treatment

(...)

7. The Committee remains seriously concerned by the State party's response to the allegations of torture in individual cases brought to the attention of the Committee, and particularly by the State party's authorities' refusal to carry out full investigations into many allegations of torture on the grounds that preliminary enquiries revealed no basis for opening a full investigation. The Committee is gravely concerned by the case of Azimjan Askarov, an ethnic Uzbek human rights defender prosecuted on criminal charges in connection with the death of a police officer in southern Kyrgyzstan in June 2010, which has been raised by several Special Rapporteurs, including the Special Rapporteur on the situation of human rights defenders (A/HRC/22/47/Add.4, para. 248; A/HRC/19/55/Add.2, para. 212). Mr. Askarov has alleged that he was beaten severely by police on numerous occasions immediately following his detention and throughout the course of the criminal proceedings against him, and that he was subjected to repeated violations of procedural safeguards such as prompt access to a lawyer and to an effective, independent medical examination. The Committee notes that independent forensic medical examinations appear to have substantiated Mr. Askarov's allegations of torture in police custody, and have confirmed resulting injuries including persistent visual loss, traumatic brain injury, and spinal injury. Information before the Committee suggests that Mr. Askarov's complaints of torture have been raised on numerous occasions with the Prosecutor's office, as well as with the Kyrgyz Ombudsman's office, and with Bazar-Korgon District Court, the Appeal Court and the Supreme Court. To date, however, the State party's authorities have declined to open a full investigation into his claims, relying on allegedly coerced statements made by Mr. Askarov while in police custody that he had no complaints. The Committee understands that the State party is presently considering the possibility of further investigating these claims. The Committee is concerned by the State party's refusal to undertake full investigations into allegations of torture

regarding other cases raised during the review, including those of Nargiza Turdieva and Dilmurat Khaidarov (arts. 2, 12, 13 and 16).

As a matter of urgency, the State party should: (a) undertake a full, effective and independent investigation into the claims of torture made by Azimjan Askarov; (b) ensure that Azimjan Askarov receives adequate medical care; and (c) review the grounds for his continued detention in light of his allegations. The State party should also ensure that torture claims made by Nargiza Turdieva and Dilmurat Khaidarov are fully, impartially and effectively investigated.

8. The Committee remains concerned at the lack of full and effective investigations into the numerous allegations that members of the law enforcement bodies committed torture and ill-treatment, arbitrary detention and excessive use of force during and following the inter-ethnic violence in southern Kyrgyzstan in June 2010. The Committee is concerned by reports that investigations, prosecutions, condemnations and sanctions imposed in relation to the June 2010 events were mostly directed against persons of Uzbek origin, as noted by sources including the Committee on the Elimination of Racial Discrimination, in 2013 (CERD/C/KGZ/CO/5-7, paras. 6–7). The Committee further regrets the lack of information provided by the State party on the outcome of the review of 995 criminal cases relating to the June 2010 violence (arts. 4, 12, 13 and 16).

The State party should take effective measures to ensure that all allegations of torture or ill-treatment, related to the June 2010 violence, by security or law enforcement officials are fully and impartially investigated, and that the officials responsible are prosecuted. In particular, the State party should ensure that:

(a) A thorough and impartial review of 995 criminal cases related to the June 2010 violence is conducted, and, when appropriate, proceedings are reopened in cases in which torture allegations have not been fully investigated or in which serious violations of due process rights have been revealed;

(b) Security or law enforcement officials found responsible are subjected to disciplinary and/or criminal penalties for torture and ill-treatment; and

(c) Allegations of any public official's infliction of, ordering of, or acquiescence to torture or ill-treatment against ethnic Uzbeks is fully and effectively investigated and, as appropriate, prosecuted.

(...)

Definition and criminalization of torture

10. While welcoming the recent amendment in the Criminal Code on the definition of torture, the Committee regrets that the current definition of torture in article 305(1) of the Criminal Code limits criminal responsibility to public officials, excluding other persons acting in an official capacity. Furthermore, the Committee

regrets that the specific offence of torture is not punishable by appropriate penalties, as required by the Convention. The Committee is also concerned that the statute of limitations applicable to the offence of torture under domestic law may prevent investigation, prosecution and punishment of these non-derogable crimes (arts. 1, 2 and 4).

The State party should continue its efforts to bring its domestic law into accordance with the Convention, inter alia by ensuring that the definition of torture in article 305(1) of the Criminal Code covers all the elements contained in article 1 of the Convention and that acts of torture are punishable by appropriate penalties commensurate with the gravity of the offence, as set out in article 4, paragraph 2 of the Convention. Furthermore, the State party should ensure that the prohibition against torture is absolute and that there is no statute of limitations for acts of torture.

(...)

National human rights institution

14. The Committee is concerned that the organization and the prerogatives of the Office of the Ombudsman do not comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), especially concerning the tenure and selection process for the Ombudsman and lack of independence. The Committee regrets that the Ombudsman (Akyikatchy) Act establishes that, if the annual report is not approved, the Ombudsman may be removed from his or her post (CAT/C/KGZ/2, para. 64). The Committee notes that the State party envisages adopting a draft law to strengthen the Office of the Ombudsman (arts. 2, 11 and 13).

The State party should bring the Office of the Ombudsman into compliance with the Paris Principles, inter alia by ensuring its independence and providing adequate resources for its operation.

(...)

29. The Committee requests the State party to provide, by 23 November 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring the respect of fundamental legal safeguards; (b) conducting prompt, impartial and effective investigations; and (c) prohibiting the use of evidence obtained through torture, as contained in paragraphs 7, 8, 10 and 14 of the present document.

(...)
