



OCTOBER 2013

KYRGYZSTAN SUBMISSION

Human Rights Watch Submission to the United Nations Committee Against Torture on Kyrgyzstan

Introduction

This memorandum, submitted to the United Nations Committee Against Torture (“the Committee”) ahead of its upcoming review of Kyrgyzstan, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the Kyrgyz government’s (“the government’s”) compliance with the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). It contains information on the plight of individuals detained in the aftermath of the June 2010 violence in southern Kyrgyzstan, lesbian, gay, bisexual, and transgender (LGBT) persons, and asylum seekers and refugees in Kyrgyzstan, whose treatment by the authorities contravenes the government’s obligations under the Convention, and proposes specific recommendations that we hope to see the Committee formulate for the Kyrgyz government.

Human Rights Watch has closely monitored the human rights situation in Kyrgyzstan for many years. A major area of focus for our work in recent years has been the aftermath of the outbreak of ethnic violence in southern Kyrgyzstan in June 2010. As part of this work, we have documented serious violations of the prohibition on torture, and have produced reports and other documents describing our research findings. For fuller analyses, please see Human Rights Watch reports “Where is the Justice” (<https://www.hrw.org/reports/2010/08/16/where-justice-o>) and “Distorted Justice” (<https://www.hrw.org/reports/2011/06/08/distorted-justice-o>).

Human Rights Watch has also monitored human rights violations against LGBT persons in Kyrgyzstan, in particular police ill-treatment of gay and bisexual men, and the state failure to prevent violence against lesbian and bisexual women and transgender men. For more information on our published work on lesbian and bisexual women and transgender men, please see our 2008 report “These Everyday Humiliations” (<https://www.hrw.org/news/2008/10/06/kyrgyzstan-protect-lesbians-and-transgender-men-abuse>).

Human Rights Watch has also documented violations by the Kyrgyz government of the right of asylum seekers and refugees to be protected from forced return to countries where they face a risk of torture. The Kyrgyz government has carried out forced returns to Uzbekistan in the aftermath of the Uzbek government massacre in the eastern city of Andijan in May 2005, following which large numbers of people fled across the border to Kyrgyzstan.

In the last two years, the Kyrgyz government has publicly recognized the problem of ill-treatment and torture in Kyrgyzstan, and taken some important steps to address it. It issued

an invitation to the UN Special Rapporteur on Torture, Juan Mendez, who conducted a mission to Kyrgyzstan in December 2011. In the resulting report, the Special Rapporteur concluded that “the use of torture and ill-treatment to extract confessions remains widespread” and that “general conditions in most places of detention visited amount to inhuman and degrading treatment.” Following his visit, the government implemented some of his recommendations, including amending the definition of torture, making it a serious crime, and adopting a national torture preventive mechanism. To date, however, torture persists as a widespread problem, and impunity for torture and ill-treatment remains pervasive across Kyrgyzstan.

Human Rights Watch considers the Committee’s upcoming review of Kyrgyzstan to be critical to sustaining the international attention and pressure we believe are essential to ensure that people in Kyrgyzstan, particularly vulnerable groups, such as ethnic Uzbeks, LGBT persons, and refugees and asylum seekers, are protected from torture and ill-treatment.

Torture and Ill-treatment and Lack of Accountability for Such Abuses in the Aftermath of the June 2010 Violence (Convention Article 16 in *Conjunction with Articles 10 and 12*)

Torture has been a long-standing problem in Kyrgyzstan, but according to lawyers with whom Human Rights Watch has spoken, the situation worsened markedly after the June 2010 violence. Law enforcement officials in the south used torture on a widespread basis in their investigations. In the period since June 2010, Human Rights Watch has received credible information about the use of torture and ill-treatment in more than 70 cases relating to the June 2010 violence. In several cases, Human Rights Watch researchers were able to interview victims recently released from custody who told Human Rights Watch that they had been severely beaten and subjected to torture, including asphyxiation and burning with cigarette stubs.

One such interview was with 30-year-old Mokhamadzhon M. (not his real name), with whom Human Rights Watch met on July 8, 2010, immediately after his release from one of the local police stations in Osh province. Human Rights Watch observed and photographed injuries on Mokhamadzhon M.’s head, back, arms, legs, and feet.

Mokhamadzhon M. told Human Rights Watch that on that same morning, a group of 15 policemen detained him in the street and brought him to the police station where five police operatives interrogated him for the rest of the day. He told Human Rights Watch:

They wanted me to confess that I killed a man. I refused, and then they wanted me to say I knew those who did. They tied my feet with a rope, hung me upside down, and beat me on the head and on the body. Then they beat me with a rubber baton on the soles of my feet. This lasted for about an hour. They also brought three other men from our neighborhood in – I heard one of them screaming as they beat him and saw the other two, both badly beaten.

Human Rights Watch documented how detainees arrested in the months following the June 2010 ethnic violence were abused in several detention facilities in the south, including in

police stations falling under the jurisdiction of the Ministry of Internal Affairs and offices of the National Security Service. The main methods of ill-treatment used by the interrogators of persons detained on June 2010-related charges in the immediate aftermath of the violence were prolonged, severe beatings with rubber batons or rifle butts, punching, and kicking.

The most severe torture and ill-treatment usually took place during the first hours or days of detention, when relatives and lawyers did not have access to the detainees. In at least two cases documented by Human Rights Watch, the victims reported being tortured by suffocation with gas masks put on their heads and the flow of air cut off until they lost consciousness. One detainee reported being burned with cigarettes, while others reported being burned with heated nails, having electric shocks applied to their genitals, and being beaten on the soles of their feet, kidneys, heads, shoulders, legs, and genitals. In most cases, the main purpose was to obtain confessions to specific crimes, but ethnic hatred seemed to have played a significant role as well.

The vast majority of torture victims at that time were young Uzbek men, although Human Rights Watch also documented the detention and abuse of elderly parents and other relatives of suspects, women, and minors as young as 14. In two cases that Human Rights Watch documented, the victims were ethnic Kyrgyz.

Human Rights Watch further documented how in the aftermath of the June 2010 violence in southern Kyrgyzstan prosecutorial authorities repeatedly refused to investigate the serious and credible allegations of torture, often claiming that preliminary inquiries did not substantiate the allegations of torture and ill-treatment. In several cases the authorities did not even question the victims of the alleged torture before deciding not to open investigations.

In numerous cases where defendants in court alleged that they were tortured with the goal of extracting a confession, judges ignored their evidence and prosecutors ignored requests for further investigation. Judges commonly justified dismissing torture allegations by pointing to the defendants' failure to complain about the torture or ill-treatment during the investigation. The prosecutorial authorities failed to take the initiative to examine claims of torture made during trial, even when the defendants presented supporting medical documents, photographic, and video material.

Additionally, Human Rights Watch has documented how investigators and prosecutors pressured detainees to retract their complaints of torture and ill-treatment, or questioned them about alleged ill-treatment in the presence of alleged perpetrators, making it impossible for the detainees to speak openly about abuse.

In the vast majority of cases reviewed by Human Rights Watch, judges accepted into evidence statements that defendants alleged were coerced with torture. In several cases, judgments indicate that judges sentenced defendants to long prison sentences solely based on coerced confessions or circumstantial evidence.

Even in the singularly rare case where a court acknowledged the fact that the defendant was tortured during the investigation, the perpetrators of torture and ill-treatment have still enjoyed virtual impunity for their crimes. Farrukh Gapirov, an ethnic Uzbek charged with involvement in the interethnic violence in Kyrgyzstan in the summer of 2010, was acquitted by the Osh Municipal Court in southern Kyrgyzstan because the court found that the main evidence against him – his confession – had been extracted under torture. Despite judicial instructions to investigate the use of torture, which were supported by photographic, video, and medical evidence presented at trial, the prosecutorial authorities in Osh refused to open a criminal investigation.

Human Rights Watch encourages the Committee to use the upcoming review to:

- *Request specific information on the number of disciplinary and/or criminal investigations into law enforcement officials for allegations of ill-treatment of ethnic Uzbeks and others in 2010 and 2011, the status of those investigations, and the number of cases in which sanctions have been imposed as well as the nature of these sanctions.*
- *Urge the Kyrgyz authorities to immediately conduct an independent review, with the participation of international legal experts, of all proceedings related to the June 2010 violence, and in particular, reopen proceedings in cases in which the authorities have not properly investigated allegations of torture, or in which there have been serious violations of defendants' fair trial rights.*
- *Outline what steps the government has taken, or is taking, to investigate promptly and impartially all allegations of torture or ill-treatment by security or law enforcement officials of any rank, and prosecute to the fullest extent of the law, in a court that meets international fair trial standards, any official against whom there is credible evidence of involvement in ordering, carrying out, or acquiescing to torture or ill-treatment.*

Ill-treatment and Torture of Human Rights Defender Azimjon Askarov (Convention Article 16 in Conjunction with Articles 12, 13, and 14)

On June 15, 2010, police in the southern town of Bazar-Kurgan detained Azimjon Askarov, a human rights defender who had worked extensively on documenting prison conditions and police treatment of detainees, accusing him of “organizing mass disturbances” and “inciting interethnic hatred,” which led to the killing of a police officer on June 13, 2010. On September 15, 2010, Askarov was sentenced to life in prison, and despite a trial marred by serious violations of fair trial standards, his sentence was upheld on appeal. An individual application was submitted on his behalf to the UN Human Rights Committee in November 2012 and is currently under review.

In a video interview recorded in December 2010, Askarov recounted in detail what happened to him at the Bazar-Kurgan police station:

They beat me continually for three days. In the investigator's office two police officers stood next me and demanded, “If you don't want to write about weapons,

then you will say that you were on the bridge [where the murder took place].” Every time I refused they beat me on my kidneys from both sides at the same time. [It felt like] my lungs would jump out.

Askarov also gave a detailed explanation of how he had been beaten to a representative of the Kyrgyz ombudsman’s office, and his lawyer filed a complaint with the Jalal-Abad province prosecutor’s office, requesting that it open a criminal investigation on the use of torture against Askarov by police.

Five police officers and the head of the temporary detention facility visited Askarov in his cell around 2 a.m. one night in June, not long after Askarov’s lawyer filed the torture complaint. They warned Askarov that they would “deal with him” if he failed to withdraw the complaint. As a result of these threats, Askarov withdrew the complaint. On June 28, the Jalal-Abad prosecutor’s office decided to not open a criminal investigation.

After a news website published the December video interview with Askarov, the Jalal-Abad province prosecutor office apparently launched a new preliminary inquiry into the allegations that Askarov had been beaten. It is unclear whether the prosecutorial authorities undertook any additional investigative measures during this inquiry. A statement posted on the website of the general prosecutor’s office refers only to information collected when Askarov was still in detention in the Bazar Kurgan police station, and claims that Askarov had been beaten by another detainee held at the same police station. On January 10 2010, the authorities again decided not to open a criminal investigation.

In July Askarov’s lawyer contested the January 2010 decision declining to open a criminal investigation into Askarov’s allegations of torture. However, on August 1, 2013, the Jalal-Abad City Court ruled against the appeal, leaving intact the prosecutor’s decision not to open a criminal investigation. In September, Askarov’s lawyer filed another appeal with the Supreme Court. On October 16, the Supreme Court similarly ruled against the appeal.

Human Rights Watch encourages the Committee to use the upcoming review to:

- *Urge the Kyrgyz government to explain on what grounds the authorities continue to decline to open a criminal investigation into Azimjon Askarov’s credible and well-documented allegations of ill-treatment and torture.*
- *Urge the authorities to release Azimjon Askarov immediately, pending full, fair, and impartial review of his conviction and separately, his allegations of torture.*

Deaths in Custody (Convention Article 16 in Conjunction with Articles 12 and 14)

Human Rights Watch has documented how in recent years, several detainees have died in custody after suffering torture and ill-treatment or have died immediately following their release from custody from injuries apparently sustained in custody. Investigations into the circumstances of these deaths have been gravely flawed. Even in the rare instances that prosecutorial authorities have opened criminal cases, investigations and trials are delayed or otherwise stalled.

On July 11, 2010, Khairullo Amanbaev, 20, died in a hospital in Osh as a result of injuries he suffered in police custody. His relatives said the police detained Amanbaev early in the morning of June 30. The next day, an acquaintance from the police informed the family that Khairullo fell out of the second floor window at the police department and was taken to the hospital. Doctors had to perform emergency surgery on Amanbaev for internal bleeding in his head, but refused to explain the cause of his injuries to his family. A family member who visited Amanbaev immediately after the surgery told Human Rights Watch that his body bore the marks of severe beatings from blunt objects – on his shoulders and face – as well as severe damage to his feet. In September 2010 the Osh city prosecutor’s office opened a criminal investigation into his death and questioned police officers who were present during his detention, but no others. The officers denied any wrongdoing. Prosecutorial authorities later closed the case. In early 2013 Amanbaev’s family hired a lawyer to contest the decision to close the case. Their appeal is currently under review.

In August 2011 Usmonzhon Kholmirzaev, 40, an ethnic Uzbek who had been detained on charges relating to the June 2010 violence, died from internal bleeding several days after he was released, apparently from injuries he sustained from beatings in custody. The policemen allegedly tortured Kholmirzaev for several hours, trying to extort money from him in exchange for his release. He told his wife that as soon as he was taken into the station, the police put a gas mask on him and started punching him. When he fell down, one of the operatives, using his knees, jumped on Kholmirzaev’s chest two or three times. Kholmirzaev said he lost consciousness. Though a criminal investigation was opened in August 2011 against four Bazar-Kurgan police officers accused of torturing Kholmirzaev, the prosecution has suffered continued delays, and the court has twice sent the case for additional investigation over the past two years. As of September 2013, hearings on the merits of the case have not begun.

In July 2013 Nurkamil Ismailov, 43, died in custody at a local police station in the Jalalabad region. Police alleged he had hung himself in his cell with his t-shirt. After his family appealed to Spravedlivost, a local human rights group, the Jalal-Abad prosecutor’s office took the rare step of opening a criminal investigation into Ismailov’s death, alleging “negligence” on the part of security service personnel. His case is ongoing.

Human Rights Watch encourages the Committee to use the upcoming review to:

- *Urge the Kyrgyz government to immediately and impartially investigate the deaths of Khairullo Amanbaev, Usmonzhon Kholmirzaev, and Nurkamil Ismailov in a manner capable of bringing the perpetrators to justice, and to hold them accountable to the fullest extent of the law.*

Ill-treatment and Torture of Lesbian, Gay, Bisexual and Transgender People (Convention Article 16 in conjunction with articles 2 and 12)

Lesbian, gay, bisexual and transgender people (LGBT) are a highly stigmatized group in Kyrgyzstan, making them particularly susceptible to abuse. As a result of this stigmatization

and the deep social conservatism prevalent in Kyrgyzstan, many LGBT people fear disclosing their sexual orientation to their families and employers, and try to keep it a secret. Members of the LGBT community in Kyrgyzstan interviewed by Human Rights Watch said police are aware of their fear of disclosure and described how police officers exploited this vulnerability to target them. Police in Kyrgyzstan have no legal right to detain LGBT people solely on the basis of their sexual orientation. In 1998 Kyrgyzstan ended Soviet-era criminalization of consensual sex between men with the adoption of a new criminal code.

From January through August 2013 Bishkek-based LGBT organizations Labrys and Kyrgyz Indigo documented at least 11 cases of human rights violations against lesbian, gay and bisexual people based on their sexual orientation. Of these, five gay men and two lesbians were victims of police abuse. Kyrgyzstan does not have hate crime legislation that would allow hate motivation to be taken account in crimes committed against LGBT people.

i. Police violence targeting gay and bisexual men

Human Rights Watch documented 31 cases of physical abuse, threats, or extortion, or all of these abuses, by police of gay or bisexual men and boys aged 17 to 50 between 2004 and 2013. Human Rights Watch documented police actions against gay and bisexual men including severe and prolonged beatings, rape, threats of rape, death threats, and denial of food and water to detainees for extended periods, acts that can constitute torture or ill-treatment.

Over a dozen gay and bisexual men Human Right Watch has interviewed reported ill-treatment in police detention, including being punched, kicked, or beaten with a gun butt or other objects. Fifteen reported threats of rape and six reported sexual violence by police officers (detailed below) including rape, group rape, attempts to put a stick, a hammer, or an electric shock weapon in the interviewee's anus, unwanted touching during a search, or being forced to undress in front of police.

Police also often asked humiliating personal questions, such as whether men or boys play an active or a passive role in sex. Many gay men reported they were compelled to give the police money, ranging from 600 soms (US\$12) to \$1,000 to avoid further physical violence, being taken into custody, or police disclosing their sexual orientation to family members or others.

Human Rights Watch further found that police arbitrarily stop gay and bisexual men and boys in public places or take them into custody solely because of their sexual orientation. Police identify gay and bisexual men and boys to target through dating websites, outside of gay clubs, and in parks where gay and bisexual men and boys meet, among other locations.

Current systems of addressing police abuse are not sufficient for protecting gay and bisexual people from violence and extortion. Many gay and bisexual men feel unable to file complaints and access existing systems of redress in Kyrgyzstan without serious negative repercussions. They have legitimate fears of retaliation by those who abused them in the first place, or by other law enforcement officials. They also fear that law enforcement officials

will fail to respect their privacy and confidentiality and will disclose their sexual orientation to the public, family members, or others.

ii. Rape and sexual violence in police custody

Five gay men and one 17-year-old gay boy told Human Rights Watch that they experienced sexual violence by police including rape, group rape, attempts by police to put a stick, a hammer, or an electric shock weapon in their anus, unwanted touching during a search, or being forced to undress in front of police. In two cases documented by Human Rights Watch, police officers disclosed the victim's sexual orientation to other detainees, who then beat or raped the victims. Fifteen gay and bisexual men and boys told Human Rights Watch that police threatened to rape them, including group rape or rape with a hanger or bottle. LGBT activists interviewed by Human Rights Watch said that sexual assault by the police is one of their biggest fears both for themselves and for other gay men in the community.

Demetra D., a 32-year-old gay man from Bishkek, told Human Rights Watch that in four different incidents between 2004 and 2011, police officers raped him, attempted to rape him, and allowed other detainees to rape him. In 2004, men who later identified themselves as police officers grabbed Demetra D. and his friend as they left a gay club, forced them into an unmarked car, drove them to the city outskirts, and beat and raped them.

iii. Insufficient complaint mechanisms and impunity

In the rare instances that gay men filed complaints about police abuse, investigations are not opened or are ineffective. Human Rights Watch is not aware of any convictions of police officers for the types of abuses against gay men as described in this submission.

In October 2010 Mikhail Kudryashov, 22, was detained by the Financial Police for allegedly disseminating gay films. While in detention, Kudryashov was beaten with bottles and hangers, received sexual threats, and was forced to undress. When he declined to write a "confession" dictated to him by the police, an officer stabbed him in the hand with a pen. On November 4, 2010, Kudryashov filed a complaint against the Financial Police officers who ill-treated him. In response, the Bishkek city prosecutor's office conducted an internal inquiry about the alleged conduct but on November 30, 2010, refused to open a criminal investigation. Kudryashov appealed the refusal to open a criminal investigation to the general prosecutor's office and through the courts, but his appeal was unsuccessful.

iv. Failure to prevent and punish violence against lesbian and bisexual women, and transgender men

Lesbians, bisexual women, and transgender men face violence, rape, and psychological abuse in Kyrgyzstan. Human Rights Watch found that abuses may happen on the street or in the home, at the hands of strangers or family members. The authorities fail to take steps to protect people from this violence, and social prejudice and silence mean that survivors are reluctant to report abuses. Advocates told Human Rights Watch of six men who raped a lesbian couple in a provincial town; when the victims went to the police, the officers allegedly refused to file the report and told them the rape was their own fault. In another case, a transgender man consulted a lawyer in 2005 about going to court under Kyrgyzstan's

domestic violence law regarding violence that he experienced from his father. He ultimately did not file a complaint because his attorney explained that he would have to return to his home village to file the case, putting him in direct danger of being further targeted by his violent father. Police themselves sometimes abuse lesbian and bisexual women and transgender men, and harass organizations that defend their basic rights. For instance, 20-year-old lesbian Damira was gang-raped by off-duty officers in 2005. The officers told her not to disclose what happened or she would suffer consequences.

Human Rights Watch encourages the Committee to use the upcoming review to:

- *Urge the government to publicly condemn violence against LGBT people and investigate promptly and impartially all cases of family violence, police abuse, and hate crimes against LGBT people and provide redress to victims;*
- *Urge the government to create an independent complaints mechanism in conformity with international standards to allow victims of police abuse, including members of the LGBT community, to report cases of ill-treatment including guaranteed full confidentiality and respect for their right to privacy.*
- *Urge the government to conduct specialized training for all officials, including the police, who are in direct contact with victims of violence. Such training should include respect for diversity, including sexual orientation and gender identity.*

Return of Asylum Seekers and Refugees to Risk of Torture (Convention Article 3)

In recent years, more than a dozen refugees and asylum seekers have been forcibly returned to Uzbekistan from Kyrgyzstan despite the country's obligations under international human rights law not to return anyone to a country where they face a serious risk of torture. Such forcible returns constitute clear violations of international human rights laws to which Kyrgyzstan is a party, including the Convention.

Between 2005 and 2007, the Kyrgyz government returned at least a dozen refugees and asylum seekers to Uzbekistan, including Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev, Rasuldzhon Pirmatov, Fayejzon Tajihalilov, Mukhamadzhon Kadyrov, Dilshodbek Khojiev, Tavakaal Khodjiev, Khasan Shakirov, Bakhodir Sadikov, and Otabek Muminov, the latter having been denied the opportunity to file asylum claim in detention. UNHCR had granted refugee status to four of these men – Maksudov, Rakhimov, Tashbaev, and Pirmatov.

In addition, at least five other asylum seekers from Uzbekistan disappeared from Kyrgyzstan during the same period. They are: Isroil Holdarov, Ilhom Abdunabiev, Bakhtiar Ahmedov, Valim Babajanov, and Saidullo Shakirov. Holdarov, a well-known Andijan-based human rights defender, was found in Uzbek custody two months after he went missing and was held incommunicado for a further six months until he was sentenced to a six-year prison term on trumped-up charges of “threatening the constitutional order of Uzbekistan.”

In May 2008, Kyrgyz authorities handed Erkin Holikov over to Uzbek authorities despite his pending asylum claim with UNHCR in Kyrgyzstan. In September 2008 Haiotjon Juraboev, an

Uzbek national who had been granted refugee status by the UNHCR, was abducted in Bishkek by a man claiming to be a Kyrgyz national security agent. In February 2009 Juraboev was sentenced to a 13-year prison term in Uzbekistan. More recently, in February 2013 Shukhrat Musin, a UNHCR refugee awaiting third country resettlement, disappeared from Bishkek. In early October his family learned from Musin's state-appointed lawyer in Uzbekistan that Musin is currently being held in a pretrial detention center in Andijan, confirming fears that he was forcibly returned to Uzbekistan.

On July 16, 2008, in its first decision on Kyrgyzstan (*Maksudov et al. v. Kyrgyzstan*), the UN Human Rights Committee found that Kyrgyzstan breached the rights to personal liberty, freedom from torture, and right to life of the four Uzbek recognized refugees mentioned above. They were extradited to Uzbekistan in August 2006. The Committee held that Kyrgyzstan should provide effective remedy and put in place effective monitoring of the four refugees' situation. The decision stressed the obligations of Kyrgyz authorities to refrain from returning people wanted by Uzbekistan's government, taking into account the great risk of torture there, and found that the "procurement of assurances [against torture] from the Uzbek General Prosecutor's Office ... was insufficient to protect against such risk."

Human Rights Watch encourages the Committee to use the upcoming review to:

- *Urge the government of Kyrgyzstan to reaffirm the absolute nature of the obligation under international law not to expel, return, extradite, or otherwise transfer any person to a country or place where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or cruel, inhuman, or degrading treatment or punishment.*