



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

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APT submission on Kyrgyzstan

Submission from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2) and 7 of the Covenant in relation to Kyrgyzstan, for the preparation of a List of Issues by the Committee during its 108th session in Geneva.

Submitted 25 April 2013

***The Association for the Prevention of Torture (APT)** is an independent NGO based in Geneva, working globally to prevent torture and other ill-treatment. To achieve this vision the organisation works within four integrated areas:*

Transparency in places of detention - Promoting a system of visits by independent experts to prisons and other places where people are held in detention.

Effective laws and policies - Lobbying with governments to ratify the Optional Protocol to the UN Convention against Torture and to adopt legal and procedural standards to prevent torture.

Capacity for prevention - Creating partnerships for prevention within countries, bringing governments, police services, judges and lawyers, national human rights institutions and civil society together in the fight against torture.

Informed public debate – Reinforcing support against torture through active and informed public debates, responding to the corrosion of international standards, particularly with parliamentarians and the media.

1. Summary

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

As a State party to the OPCAT, Kyrgyzstan has made positive progress in the establishment of a national body for the prevention of torture, and received the UN Subcommittee on Prevention of Torture in September 2012.

The UN Special Rapporteur on Torture undertook a mission to Kyrgyzstan in December 2011, and the OHCHR have since drafted an Action Plan for the implementation of recommendations by the SRT. However, the level of progress is uncertain.

2. The role of the OPCAT in the prevention of torture

The risk of torture and other ill-treatment exist in all situations where people are deprived of their liberty, particularly in places closed to the outside world.

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to minimise the risks of abuse by opening up prisons, police stations, mental health institutions and all other places of detention to examination by independent watchdogs.

States parties to the OPCAT allow two complementary forms of examination. First, by the UN Subcommittee on Prevention of Torture (SPT), and second, by locally established national preventive mechanisms (NPMs).

The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

3. Background information on Kyrgyzstan

a. Implementation of the OPCAT

Kyrgyzstan ratified the OPCAT on 29 December 2008, and has succeeded in developing a well thought-out vision of a NPM as well as a related law,¹ which largely conforms to the provisions of the OPCAT.

The proposed NPM comprises a National Centre for the Prevention of Torture and a Coordination Council for the Prevention of Torture. While the latter will undertake the

¹ The Law of the Kyrgyz Republic "On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment", which entered into force on 12 July 2012.

day-to-day preventive work of the NPM, the Coordination Council has the vitally important role of spearheading the NPM's advocacy and policy activities and acting as its interface with the authorities.

From the NPM law it is apparent that the establishment, structure and functioning of the proposed NPM have been carefully thought through by its authors and much detail is provided in this respect. Encouragingly, as recommended by the UN Subcommittee on Prevention of Torture (SPT), the NPM model emerged as a result of exhaustive open, transparent and inclusive national discussions.²

The law on the establishment of the NPM had its third and final reading in the Kyrgyz parliament on 8 June 2012. Thereafter, the signature of the president took place on 12 July 2012. In theory, the Kyrgyz authorities had three months in order to recruit the staff and members of future NPM and set up the institution. Unfortunately, this process was hampered by several factors, not least owing to the collapse of the ruling government coalition in August 2012 and the absence of any earmarked funding in the budget for 2012.

Despite this initial lack of progress, there have been some positive developments in this respect in the first months of 2013. An important step forward was taken in the period February – April 2013, when the process of selecting the members of the Coordination Council for the Prevention of Torture was completed. This body comprises eight representatives of civil society, two parliamentarians and the country's Ombudsperson. The latter is automatically a member of the Coordination Council in order to ensure there is a meaningful coordination of the activities of the NHRI and the NPM.

On 18 February 2013 a joint national and international recruitment panel began examining applications from civil society to the 11-person Coordination Council for the Prevention of Torture. This process of recruiting the civil society representatives was finalised on 27 February when the civil society representatives were selected by the panel. The composition of the overall Coordination Council was completed on 9 April 2013 when the two parliamentarian members were nominated by their respective government and opposition factions.

The Coordination Council met for the first time on 16 April 2013 when it, among other matters, began the process of developing its internal rules of procedure. It also elected a Chairperson and Deputy Chairperson and, crucially, initiated the process of recruiting the all-important position of Director and Deputy of the other component of the NPM, the National Centre for the Prevention of Torture, both of which are full-time positions. It is anticipated that the recruitment of these positions will be completed by 15-16 May 2013. It is hoped the process of recruitment of the staff of the National Centre for the Prevention of Torture will commence shortly thereafter and that, once the NPM is in place, it will quickly begin its activities as the country's NPM.

² See SPT, *Guidelines on national preventive mechanisms*, UN Doc CAT/OP/12/5, 9 December 2010, at para.16.

A further notable OPCAT-related development in the country can be seen in the form of the visit of the SPT to Kyrgyzstan in September 2012. At the time of writing the SPT had recently transmitted its confidential visit report to the Kyrgyz authorities and was awaiting its response.

b. The 2011 Visit of the Special Rapporteur on Torture to Kyrgyzstan

The much anticipated visit of the UN Special Rapporteur on Torture, Professor Juan Méndez, to Kyrgyzstan took place in December 2011 and the report of his visit became public in February 2012. As Kyrgyzstan was last examined by the UN Committee against Torture and the UN Human Rights Committee as long ago as 1999 and 2000 respectively, Professor Méndez' report represents an exceptionally important document. It was therefore deemed essential that there should be swift and systematic follow-up to these recommendations.

With this aim in mind, the APT, OHCHR's Regional Office in Central Asia, and a range of other international and domestic organisations organised a follow-up event on 21 May 2012 in Bishkek which focussed on Professor Méndez' recommendations. The timing of the event deliberately coincided with Professor Méndez' fact-finding mission to neighbouring Tajikistan in the same month, which enabled him to travel to Bishkek for the follow-up event.

The one-day round-table event was titled 'The Implementation of the Recommendations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following his Mission from 5-13 December 2011, and other Human Rights Mechanisms for the Prevention and Combating of Torture'. It was designed to bring together an array of relevant national actors, including civil society, with a view to identifying key recommendations from Professor Méndez' report that could be acted upon in a given time frame, so as not to lose the impetus generated by the mission and its related report.

In the period running up to the round-table event OHCHR's Regional Office in Central Asia initiated the drafting of an Action Plan aimed at implementing the recommendations contained in the UNSRT's report as well as those which arose from Kyrgyzstan's Universal Periodic Review (UPR) in 2010. By convening a small group of national civil society experts, OHCHR created a draft Action Plan,³ which outlined Professor Méndez' and the UPR recommendations, and identified the appropriate action which should be taken (and by whom) in order to implement them in practice. Several weeks prior to the event, the draft Action Plan was widely distributed among government and non-government actors for their comments. This Action Plan was subsequently used by the organisers of the 21 May 2012 round-table event as the basis of the day's discussion.

On the whole, the day's discussion was focussed, fluid and, with a few exceptions, generally constructive. For reasons of brevity this submission will not go into any further detail regarding the exchanges that took place on the day, although additional

³ The full title of the Action Plan is as follows: '*Action Plan to Implement the Recommendations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Based on the Findings of his Mission from 5-13 December 2011, as well as other Human Rights Mechanisms to Prevent and Eliminate Torture*'.

information could be provided upon request. Nonetheless, the event and the related Action Plan can be regarded as a useful first step aimed at acting on the UNSRT and UPR recommendations. The APT is informed that since the May 2012 event the Action Plan has continued to be employed by the Kyrgyz authorities and civil society as a working tool in joint fora with the aim of implementing the said recommendations. What is unclear at the time of writing, however, is the extent to which concrete progress has been achieved in this respect, a point which would merit further inquiry.

4. Suggested questions

In light of the background material above, the APT proposes that the Human Rights Committee includes the following questions in its List of Issues to Kyrgyzstan:

Articles 2(2) and 7

- Please provide information about the latest steps which are being taken to put in place the overall Kyrgyz NPM, particularly the National Centre for the Prevention of Torture;
- Please provide information about any measures undertaken to provide the NPM with adequate financial, material and human resources;
- Please indicate a possible time-frame in which the process of instituting the NPM will be finalised;
- Please indicate whether the Kyrgyz authorities are considering the possibility of making public the report of the visit of the SPT to Kyrgyzstan;
- Please provide information about the extent to which the 'Action Plan to Implement the Recommendations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Based on the Findings of his Mission from 5-13 December 2011, as well as other Human Rights Mechanisms to Prevent and Eliminate Torture' has been acted upon in practice;
- Please provide specific examples of recommendations which have been implemented in practice since the publication of the UNSRT's 2012 report on his visit to Kyrgyzstan and the country's UPR in 2010.

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