THE COALITION OF NGOs OF THE KYRGYZ REPUBLIC
AGAINST TORTURE

NGO REPORT
on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Kyrgyz Republic

Bishkek – 2013

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LIST OF ABBREVIATIONS

SCNS – State Committee for National Security
CDIA – City Department of Internal Affairs
MIA CIDG – Criminal Investigation Directorate-General of the Ministry of Internal Affairs
SSEP– State Service for Execution of Punishment [State Penitentiary Service] under the Government of the Kyrgyz Republic
The Law on Custody – Law of the Kyrgyz Republic "On the procedure and conditions of holding persons detained on suspicion of offenses in custody"[1]
TDF – Temporary detention facility
PC -- Penal colony
AC of KR – Administrative Code of the Kyrgyz Republic
LGBT – Lesbian, gay, bisexual and trans-gender community
MIA – Ministry of Internal Affairs
Minimum Standard Rules - – Standard Minimum Rules for the Treatment of Prisoners[2]
ICCPR – International Covenant on Civil and Political Rights[3]
NGO – Non-governmental organization
OSCE – Organization for Security and Cooperation in Europe
DIA – Department of Internal Affairs
PSC – Public Supervisory Council
UN – United Nations
CIU – Criminal Investigation Unit
Internal order rules – Internal order rules for temporary detention facilities under the law enforcement bodies of the Kyrgyz Republic[4]
Collection and distribution facilities – Collection and distribution facilities under the law enforcement bodies for persons without fixed place of residence, documents and special collection facilities under the law enforcement bodies for persons under administrative arrest
DDIA – District Department of Internal Affairs
IDF – Investigative detention facility
DirIA – Directorate of Internal Affairs
CC of KR – Criminal Code of the Kyrgyz Republic[5]

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[1] As amended by Laws of KR of June 11, 2003, No.100, August 13, 2004, No.124, August 19, 2004, No.158, June 25, 2007, No.91, Decree of the Provisional Government of KR of September 17, 2010, ВП No.128, Laws of KR of July 14, 2011, No.99, October 19, 2011, No.180.

[2] Adopted by the 1st United Nations Congress on the Prevention of Crime and the Treatment of Offenders, August 30, 1955.

[3] Adopted by Resolution 2200 A (XXI) of the UN General Assembly on December 16, 1966.

[4] Approved by Resolution of the Government of the Kyrgyz Republic, of February 2, 2006, No.57.

[5] CC of KR entered into force by Law of KR as of October 1, 1997, No69. As amended by Laws of KR of September 21, 1998, No.124, December 9, 1999, No.141. July 23, 2001, No.77, November 19, 2001, No.92, March 12, 2002, No.36, June 22, 2002, No.109, July 8, 2002, No.115, October 16, 2002, No.141, February 17, 2003, No.36, June 11, 2003, No.98, June 11, 2003, No.99, June 11, 2003, No.100, August 5, 2003, No.192, August 9, 2003, No.193, August 24, 2003, No.199, November 14, 2003, No.221, November 15, 2003, No.223, February 15, 2004, No.13, March 7, 2004, No.17, March 23, 2004, No.46, July 26, 2004, No.99, July 27, 2004, No.101, December 15, 2004, No.191, August 5,

CEC of KR – Criminal Executive Code of the Kyrgyz Republic[6]
CPC of KR – Criminal Procedural Code of the Kyrgyz Republic[7]

2005, No.122, January 5, 2006, No.1, February 6, 2006, No.35, February 13, 2006, No.56, February 13, 2006, No.57, August 8, 2006, No.156, August 8, 2006, No.158, August 8, 2006, No.159, November 22, 2006, No.182, November 22, 2006, No.183, December 28, 2006, No.211, December 28. 2006, No.216, December 29, 2006, No.230, February 12, 2007, No.16, June 25, 2007, No.91, July 31, 2007, No.129, August 6, 2007, No131, August 10, 2007, No.150, August 15, 2007, No.152, June 23, 2008, No.131, July 7, 2008, No.138, July 18, 2008, No.151, August 5, 2008, No.199, October 17, 2008, No.223, October 17, 2008, No.231, December 29, 2008, No.274, December 29, 2008, No.275, January 19, 2009, No.8, February 20, 2009, No.58, February 20, 2009, No.60, March 17, 2009, No.83, May 8, 2009, No.150, July 17, 2009, No.230, July 17, 2009, No. 234, July 24, 2009, No.246, October 13, 2009, No.271, November 20, 2009, No.301, December 17, 2009, No.309, February 10, 2010, No.27, July 11, 2011, No.89, July 26, 2011, No.141, July 26, 2011, No.143, October 18, 2011, No.177, October 27, 2011, No.185, November 1, 2011, No.195, November 10, 2011, No.204).

[6] CEC of KR entered into force by Law of KR of 13 December 1999 No.143. As amended by Laws of KR as of 20 March 2002 No.41, 8 July 2002 No.114, 11 June 2003 No.99, 11 June 2003 No.100, 27 July 2004 No.101, 4 May 2007 No.68, 25 June 2007 No.91, 10 February 2010 No.27, 12 July 2012 No.105, 16 July 2012 No.114, 18 March 2013 No.43.

[7] CPC of KR. Put in force by Law of KR of June 30, 1999, No.63. As amended by Laws of KR of June 22, 2001, No.55, June 28, 2001, No.62, August 4, 2001, No.81, March 20, 2002, No.41, October 16, 2002, No.141, March 13, 2003, No.61, June 11, 2003, No.98, August 5, 2003, No.192, November 14, 2003, No.221, March 24, 2004, No.47, March 28, 2004, No.52, May 24, 2004, No.68, August 8, 2004, No.111, July 22, 2005, No.112, February 6, 2006, No.35, July 19, 2006, No.123, August 8, 2006, No.157, November 24, 2006, No.188, December 29, 2006, No.232, February 9, 2007, No.13, June 13, 2007, No87, June 25, 2007, No.91, June 25, 2007, No.93, July 14, 2008, No.142, July 14, 2008, No.143, July 18, 2008, No.144, August 5, 2008, No.193, October 17, 2008, No.220, July 17, 2009, No.225, July 17, 2009, No.231, July 17, 2009, No.234, July 24, 2009, No.246, October 12, 2009, No.267, October 12, 2009, No.268, October 26, 2009, No.288, October 26, 2009, No.289, February 10, 2010, No.27, February 25, 2010, No.35, July 11, 2011, No.89, July 26, 2011, No.141, August 9, 2011, No.152, October 27, 2011, No.186, November 16, 2011, No.214).

INTRODUCTION

This Report is dedicated to the observance by the Kyrgyz Republic of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which the Kyrgyz Republic acceded to on September 5, 1997.

In 1998, in accordance with paragraph 1 of article 19 of the Convention against Torture, the Kyrgyz Republic submitted to the UN Committee against Torture an initial report on measures implementing its obligations under the Convention.[8] Based on its review, the Committee against Torture expressed its concern over the general situation with human rights in the Kyrgyz Republic and presented a number of recommendations to improve the situation in the sphere of protection against torture and ill-treatment.

The present Report covers the period from 1999 to 2013 and was prepared as an alternative to the Second Periodic Report of the Kyrgyz Republic on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the period from 1999 to 2011 (hereinafter referred to as the National Report).[9]

In preparing this report, statistical data and analytical materials of State bodies have been used, as well as information obtained during the practical work of the human rights non-governmental organizations for the protection of victims of torture, and the results of the monitoring of the right to protection against torture and ill-treatment.

The Report was prepared by the following non-governmental organizations and civic activists, members of the Coalition against Torture in the Kyrgyz Republic (hereinafter referred to as the Coalition against Torture[10]):

- Regional Human Rights Organization "Spravedlivost" (Jalalabat)
- Public Association "Youth Human Rights Group" (Bishkek)
- Public Association "Mental Health and Society" (Bishkek)
- Public Association "Institute of Public Analysis" (Bishkek)
- Public Foundation "Golos Svobody" (Bishkek)
- Public Foundation "Centre for the protection of human rights "Kylym Shamy" (Bishkek)
- Public Foundation "Ray of Solomon" (Osh)
- Public Foundation "Independent Human Rights Group" (Bishkek)
- Partnership Group "Precedent" (Bishkek)

[8] The Committee against Torture considered the Initial Report of the Kyrgyz Republic at its Meetings 403, 406 and 408 on November 16, 17 and 18, 1999 (CAT/C/SR. 403, 406 and 408).
[9] Approved by Resolution of the Government of the Kyrgyz Republic of March 16, 2012, No.179.
[10] Coalition against torture in the Kyrgyz Republic was established in 2011 and represents an informal association of non-governmental non-profit organizations, civic activists and their supporters to prevent and combat torture in the Kyrgyz Republic. The current members of the Coalition against torture are 15 non-governmental organizations (ANGO "Human rights Advocacy Center", PA "Unit of Solidarity", Human Rights Network "Spravedlivost", PF "Voice of freedom", PF "Alternativa", PF "Golos Svobody", PF "Kylym Shamy", PF "Ray of Solomon", PF "Youth Human Rights Group", PF "Independent Human Rights Group", Social-legal spectrum "Spectrum", PF "International Protection Assistance Center"), 2 civil society activists (Ikram Mameshev, Almaz Esengeldiev). Partners of the Coalition are: UN OHCHR, Open Society Justice Initiative, Tian-Shan Policy Center under AUCA, Soros Foundation Kyrgyzstan, Amnesty International, OSCE Center in Bishkek.

- Association of NGOs "Human Rights Advocacy Center"(Osh)
- Elena Halitova, a forensic expert (Bishkek)

The Report was prepared under the coordination of the Public Foundation "Golos Svobody".

The Report reflects information on the implementation by the Kyrgyz Republic of its obligations under the Convention against Torture on articles 1, 2, 3, 4, 5, 8, 10, 11, 12, 13, 14, 15 and 16, as well as responses to the questions posed by the Committee against Torture as per the list of questions provided.

While welcoming the positive changes and trends that have been observed in the Kyrgyz Republic's legal system in the past few years, the authors of the Report, nevertheless, sat themselves the task of highlighting the most acute and problematic aspects in legislation and legal practice that promote the continued practice of torture and ill-treatment in the country.

In recent years, the Government and State bodies of the Kyrgyz Republic have taken certain steps to combat torture and impunity:

- Amendments were introduced into article 305-1 ("Torture") of the Criminal Code of KR in order to criminalize torture, in full accordance with the requirements of the Convention against Torture of complete and proper implementation of the Convention's definition of "torture". The list of optional features of the subjective components of the "torture" offense (the goal and motives) has been expanded; the sanction for using torture has been toughtened, allowing to qualify this type of offense as grave and the gravest.

- Amendments were introduced into article 17 of the Law on custody that precluded the requirement whereby "appointment is provided to the defense counsel based on the availability of a written confirmation of the counsel's participation in the criminal proceedings issued by the investigator, the prosecutor, the court handling the criminal case" which hitherto violated the principle of equality of parties in the process and the right to defense.

- A National Preventive Mechanism (a National Center of the Kyrgyz Republic for the Prevention of Torture) has been established and launched as a new approach to the prevention of torture under the Optional Protocol to the Convention against Torture.

- Timely submission of periodic reports on the implementation of international treaty obligations to international human rights bodies has been ensured and activities to implement their recommendations have been carried out.

- A strategy for prevention of torture and ill-treatment in the police custody and improvement of conditions of holding in custody has been devised, coordination and monitoring of the execution of the strategy, including direct involvement in its implementation, have been ensured.

- Awareness-raising and educational measures have been developed to eliminate the causes and conditions entailing torture and ill-treatment, increase public awareness on the part of legislation relating to human rights and mechanisms for their protection.

- An institute of independent expert medical examination has been introduced, thereby abolishing the monopoly of the State forensic medical examination.

- A conflict of interest in exercising main functions of the prosecution (investigation) and supervision over the legality and public prosecution in court has been excluded from the organizational management of the Prosecutor-General's Office of the Kyrgyz Republic.

However, despite these positive developments, torture in the Kyrgyz Republic continues to be of massive and widespread character. This has been evidenced by the results of numerous human rights NGOs' monitoring efforts on torture/ill-treatment situations in closed-type institutions and the conclusions made by international organizations and experts, as set out in the respective reports.

Thus, during his visit to the Kyrgyz Republic in 2011, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the Special Rapporteur on torture) Mr. Juan Méndez noted at a press conference in Bishkek that "the use of torture and ill-treatment is widespread, and it is commonly used by officials of the Ministry of Internal Affairs in the first hours of detention and interrogation to extract confessions".[11]

The same conclusion on the broad scope of the problem was reached by civil society groups when monitoring 47 temporary detention facilities throughout the territory of the Kyrgyz Republic in 2011. Thus, 70% of 193 respondents made allegations of torture and ill-treatment by law enforcement officials, with torture used in 83.3% of those cases to obtain confessions, and in 13.3% as punishment.[12]

The problem of torture was most acutely manifested in the course of investigations into offenses related to the events that took place in the South of the country in June 2010 (hereinafter referred to as "the June events"). According to the official response to an inquiry by Public Foundation "Centre for the protection of human rights "Kylym Shamy", as of December 1, 2010, investigative-operative groups brought 5,158 criminal cases and forwarded to the court for consideration on the merits 169 cases that involved 305 defendants, and 446 victims. According to the Human Rights Watch, these criminal investigations were accompanied by massive human rights violations, including torture, unlawful detention and ill-treatment of detainees.[13] Criminal prosecution was mainly of discriminatory character, as evidenced by the fact that 85% of detainees were ethnic Uzbeks.[14] According to the report of the International Independent Commission for Investigating the Events in the South of the Kyrgyz Republic, mistreatment of prisoners in the first hours of detention took place in almost every case, regardless of the place of detention.[15] Prisoners were subjected to various methods of torture and ill-treatment, including beatings all over the body with fists, batons, metal

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[11] "Law enforcement agencies' employees use torture in Kyrgyzstan – UN Special Rapporteur on torture", available at http://news.mail.ru/inworld/kyrgyzstan/society/7584703/, 13 December 2011,.

[12] Report "Torture prevention in temporary detention facilities under the law enforcement bodies of the Kyrgyz Republic". Bishkek 2011.

[13] "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch , 2010, p.49.

[14] Ibid.

[15] Report of the Independent International Commission of Inquiry into the events into the southern Kyrgyzstan in June 2010, para 278.

rods and rifle butts, use of electric shock devices, asphyxiation with a gas mask or plastic bag, burning with cigarettes and pulling out of fingernails.[16]

According to the Special Rapporteur on torture, Mr. Juan Méndez, ill-treatment often occurs in temporary detention facilities, office rooms of the MIA criminal investigation police officers, as well as in detention facilities under SCNS.[17]

According to the Coalition against Torture, about 90% of the cases of torture identified by human rights defenders in the period from March 2007 through April 2008 occurred within the confinements of the MIA temporary detention facilities. Of the 59 registered cases, torture was used: in 54 instances - in TDFs, in 1 instance - within SCNS, 1 instance - inside a military unit, and 3 instances - in other public institutions.
Most of the victims were aged 18 to 40.[18]

Despite the recent initiatives of the Office of the Prosecutor-General on strengthening prosecutorial supervision of the constitutional safeguard for the prohibition of torture and other inhuman, cruel or degrading treatment or punishment,[19] no real action have been taken to suppress the practice of torture in the country. Instances of torture and ill-treatment continue to be widespread, while instances of persons brought to criminal responsibility for torture remain rare exceptions.

Among the causes contributing to widespread torture and impunity for its use in the Kyrgyz Republic, the following should be noted:

- **National legislation establishing criminal liability for torture, does not fully meet international standards of effective criminalization of torture.** Thus, among all types of persons liable for torture, the current CC of KR envisages only *that of a public official*, whereas, in accordance with the provisions of the Convention against Torture, torture can be committed by either a public official, or *"any other person acting in an official capacity"*.

- In accordance with the CPC of KR, operational-search activities of bodies of the inquiry that are aimed at preclusion of a crime, as well as detection of perpetrators (crime detection), comprise a part, however isolated, of criminal proceedings and, in accordance with Article 1 of the CPC of KR, should be governed by the norms of the CPC of KR. However, no norm of the CPC of KR regulates the procedure for carrying out operational-search activities, determines the status of those persons involved in these operations or, more importantly, provides for their rights and responsibilities. It is believed that these issues have been regulated by the Law of KR "On operational-investigative activities", but they have not. It is not uncommon, when a Criminal Investigations Unit's detective officer does not permit a lawyer's access to a person whose involvement in a crime is being checked, arguing that the person has not been detained but invited for an interview, and that the Law of KR

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[16] Report of the Independent International Commission of Inquiry into the events into the southern Kyrgyzstan in June 2010, para 278.
[17] "Kyrgyzstan Law enforcement structures employees use torture – UN Special Rapporteur" article published at http://news.mail.ru/inworld/kyrgyzstan/society/7584703/ on 13 December 2011.
[18] Institute for Public Policy, Torture: The Situation in Kyrgyzstan, 11 August 2008, op. cit., available at http://www.ipp.kg/en/analysis/690/
[19] Order of the Prosecutor-General's Office of KR, No.40 of April 12, 2011. Direction of the Prosecutor-General's No.70 of September 6, 2011.

"On operative-investigative activity" does not provide for a lawyer's participation the operational-search activities are carried out in the form of "inquiry". Since there is no clear-cut norm in this Law, it must be set forth in the CPC of KR, as required by Article 1 of CPC of KR.

- **An absence of mechanisms providing for the legality and validity of grounds for detaining and keeping a person in custody.** So far, there is no clear mechanism for consideration by courts of legality and validity of grounds for detention. In most cases, judges satisfy petitions of the investigation to choose a measure of restraint in the form of taking detainees into custody basing their decision solely on seriousness of a crime - which contradicts international standards in terms of observance of the right to liberty and security of the person. While considering cases for determining a measure of restraint, judges abstain from assessing allegations of torture, arguing that their activities are limited solely to the issues of sanctioning.

- Torture of persons suspected and accused of offenses is mostly used to extract confessions. There is a need for changes in procedural law that would establish additional safeguards for torture and ill-treatment prevention.

- **Lack of lawyers' prompt and unhindered access to their clients.** In accordance with rules of national legislation, a person being detained is entitled to legal counsel from the moment of his/her factual arrival at the facility of initial inquiry. Interrogation of the suspect or accused must be carried out with the participation of a defense counsel. In practice, however, the absence of a lawyer's prompt and unhindered access to the detainee is a serious problem and one of the reasons for the use of torture in criminal investigations.

- **Extradition and non-expulsion.** The country's legislation does not directly regulate the issues of prohibition of extradition to a country where the person may face the threat of torture. Extradition issues are mostly regulated by bilateral agreements of Prosecutor-General's Offices, the Minsk and Kishinev Conventions on legal assistance and legal relations in civil, family and criminal cases, as well as the Shanghai Convention on combating terrorism, separatism and extremism (2001), which provide for procedural matters only and do not contain standards of freedom from torture.

- **Torture victims' refusal to make allegations of torture.** Persons held in custody lack the ability to file complaints for various reasons, such as: an absence of appropriate conditions for drafting a complaint (lack of paper, a pen or a suitable lighting); fear of being punished, lack of competent counsel, general mistrust towards the system.

- **Ineffectiveness of the system of education and training.** The system of education and training of young specialists in the field of law in higher educational institutions of the country poses a serious problem.

- **Failure to comply with provisions of the Constitution** in that, once duly and legally ratified, international treaties, to which the Kyrgyz Republic is a party, as well as universally recognized principles and norms of international law comprise a constituent part of the legal system of the Kyrgyz Republic, while the norms of international human rights instruments bear direct effect and take precedence over the norms of other international treaties.

- **Failure of the Government of the Kyrgyz Republic to comply with international obligations on the implementation of the decisions of the UN treaty bodies** under individual communications submission procedures. By 2013, the Human Rights Committee made observations on 14 individual communications in respect of the Kyrgyz Republic in compliance with the Optional Protocol to the ICCPR, recognizing violations of the right to freedom from torture in 6 of them in respect of 9 individuals.[20] To date, none of the observations of the Human Rights Committee has been implemented.

Articles 1 and 4

1. In connection with the previous findings and recommendations of the Committee, we request that information be provided on the activities undertaken to ensure that the definition of torture contained in the Convention is fully integrated into domestic legislation. Please explain whether the change made in the Criminal Code in 2003 to criminalize torture (art. 305-1) matches the provisions of article 1 of the Convention. Please explain why deprivation of liberty for a term of three to five years envisaged for the crime of torture under article 305-1 of the Criminal Code is an appropriate type of punishment. How does this measure relate to other measures provided for in the Criminal Code? Has this provision of the Criminal Code ever been invoked in court? Please provide detailed statistics on the total number of criminal prosecutions instituted on the basis of allegations of torture or ill-treatment by police officers or other public officials, and their outcomes.

The concept of "torture" was introduced in the CC of KR in November 2003 (art. 305-1). In accordance with the provisions of this article, torture was *"an intentional infliction of physical or mental suffering to a person for such purposes as obtaining from him/her information or a confession, punishing him/her for an act he/she has committed or is suspected of having committed, or intimidating or coercing him/her into committing certain actions, when such pain or suffering is inflicted by or with the consent or acquiescence of a public official or other person"* and was punishable by *"deprivation of liberty for a term of three to five years, along with or without deprivation of the right to engage in certain activities for a period of one to three years".*

This definition did not fully reflect the requirements of article 1 of the Convention against Torture, with changes made, in this connection, to the norm of the article in 2012. In accordance with current criminal legislation, torture is *"an intentional infliction of physical or mental suffering to a person for such purposes as obtaining from him or another person information or a confession, punishing him for an act he or another person has committed or is suspected of having committed, as well as intimidating or coercing him or another person into committing certain actions, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with a consent or acquiescence of a public official".*

This article consists of a definition of "torture" and the qualifying elements that lead to deprivation of liberty for a term of four to eight years and deprivation of the right to hold certain job positions or engage in certain activities for a period of one to three years.

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[20] Views of the Human Rights Committee, No.1369/2005, 1402/2005, 1461/2006, 1462/2006, 1476/2006, 1477/2006, 1503/2006, 1545/2007, 1756/2008.

Part two of the article stipulates a penalty in the form of deprivation of liberty for a period of seven to ten years, along with deprivation of the right to hold certain posts or engage in certain activities for a period of one to three years for torture committed by a group of persons or a group of persons by previous collusion.

Cases in which torture is used against a woman known by the perpetrator to be pregnant, or a minor, against a person in a helpless state, committed with particular cruelty and/or by an organized group, as well as entailing grave consequences, or causing serious bodily injury or death through negligence, are punishable by imprisonment for a term of ten to fifteen years, with deprivation of the right to hold certain posts or engage in certain activities for a period of one to three years.

In general, this definition is in line with the definition of torture stated in the Convention against Torture. One positive aspect is the fact that to qualify an act as "torture", this article does not require a "severe pain", thus allowing prohibiting other forms of ill-treatment nearing "torture". However, as was mentioned above, among the types of persons responsible for torture, national legislation envisages only *public officials*, whereas, in accordance with the provisions of the Convention against Torture, torture can be committed by either an official, or *"any other person acting in an official capacity"*.

According to the Kyrgyz Republic Prosecutor-General's Office:

- 34 cases were filed during 2010, of which 28 were under article 305 part 2 paragraph 3 (exceeding powers) of the CC of KR and 6 were under two articles of 305 part 2, paragraph 3 and 305-1 of the CC of KR.[21]

  Investigation of criminal cases revealed: 4 cases were discontinued, 6 were suspended (all of them on the grounds that it was impossible to identify persons liable to prosecution as accused), 3 cases were at their investigation stage; 21 cases against 32 persons were sent to court.

  Of 32 persons whose cases were considered by courts, 6 persons were convicted, one acquitted; cases were dismissed in relation to 12 persons because of the victims' refusal to support charges. 13 criminal cases are pending trial.

- For the year 2012 in the country, 371 allegations of torture were filed, with institution of criminal proceedings refused for 340 of them. Investigation of 31 criminal cases brought the following results: 20 cases were referred to courts for consideration, 6 criminal cases were suspended, 2 cases were dismissed, 3 cases are currently under investigation.[22]

- For the first half of 2013, 146 cases of torture were registered inthe country, for 139 of them institution of criminal proceedings was refused . Investigation of 7 criminal cases brought the following results: 5 criminal cases against 9 persons were referred to courts for consideration, 2 criminal cases are currently under investigation.[23]

[21] Article 305 part 2 of CC of KR: "Abuse of powers, i.e. actions undertaken by a public official that clearly exceeded his authority and led to the violation of rights and lawful interests of citizens or legal entities or legally protected interests of society or the State, committed through use of physical force or a threat of such use".

[22] Reply by the Prosecutor-General's Office of KR of February 12, 2013, No.8/1-3p.

[23] Response by the Prosecutor-General's Office of KR of August 16, 2013, No.8/1-236-12.

According to the Judicial Department at the Supreme Court of KR, in 2012, courts proceeded in 63 cases with convictions under article 305 of CC of KR (Exceeding of official powers), 49 of them resulted in a conviction and 37 - in justification.
73 criminal proceedings against 111 persons were terminated.
11 cases against 14 people were returned to the Prosecutor's Office for filling out the gaps.
No cases were considered by the national courts under article 305-1 of CC of KR ("torture").

2. In connection with direct applicability of the Convention, please provide statistical data on cases, if any, where CAT provisions were invoked in a court of law and clarify whether the Convention has been ever applied by courts in a case.
Based on the response of the Judicial Department at the Supreme Court of the Kyrgyz Republic, statistical reports of the country's local courts contain no data concerning application of the Convention against Torture.

Article 2

3. Please indicate existing guarantees for persons detained or held in custody pending trial, - for example, access to an independent lawyer and a doctor, as well as the right to contacts with a family member, and how these measures are applied in practice.

National legislation provides for procedural safeguards for persons detained or held in custody until a court's choice of a measure of restraint against them.

Under the Constitution of the Kyrgyz Republic, every person has the right to liberty and security of person.[24] No person may be detained for longer than 48 hours without a court decision, every detained person must be promptly, before the expiry of 48 hours from the moment of detention, brought before the Court for resolving the issue of the lawfulness of his detention.

The CPC of KR defines detention as a measure of procedural compulsion which essentially consists of imprisoning a suspected person for a period of up to forty-eight hours.[25]

There are legal guarantees in respect of the rights, freedoms and dignity of all the bodies and persons involved in criminal proceedings, of the inadmissibility of the use of threats, violence or other unlawful means in the course of interrogations and other investigative and judicial proceedings, as well as of the duty of keeping the person detained and held him in custody on suspicion of having committed an offense in conditions that exclude any threat to his life or health.[26]

None of the parties to the proceedings may be subjected to violence or other cruel or degrading treatment.[27]

[24] Constitution of KR. Article 24.
[25] CPC of KR. Article 5.
[26] CPC of KR. Article 10.
[27] CPC of KR. Article 11.

There is guaranteed judicial protection of rights and freedoms of the detained suspect/accused in case the rights and freedoms are violated at any stage of the process.[28]

The status of persons detained on suspicion or accused of committing a crime is defined by law as a *suspect* and an *accused*.

In accordance with the current criminal legislation, *a suspect* is a person against whom criminal proceedings have been instituted or who has been detained pending determination of a measure of restraint.

A suspect has a right to:

- know what he is suspected of;
- get a copy of resolution on institution of criminal proceedings against him or a copy of the record of detention;
- get a copy of the list of his rights;
- have a counsel from the moment of the first interrogation, and in case of detention – from the moment of his actual arrival to the agency of preliminary investigation;
- make statements concerning the crime suspected for or refuse to make such statements;
- make statements in the suspect’s native language or the language he/she speaks;
- use services of an interpreter;
- introduce evidence;
- present motions and challenges;
- study records of the investigative proceedings he/she was involved in and make comments on them so as for these comments to be included in the official records;
- participate in investigative proceedings taken upon the suspect’s motions or motions of the counsel or legal representative with an investigator’s consent; and
- file complaints about actions of investigation unit employees, actions and decisions of an investigator or a prosecutor.[29]

Upon every delivery of a suspect to a TDF and upon receiving from the suspect/lawyer/relatives a complaint about the suspect’s being physically abused by workers of the body of inquiry and investigation, he/she shall be subject to an obligatory medical examination followed by a preparation of a relevant document. The responsibility of conducting a medical examination is under the TDF administration.[30]

An accused is a person against whom a resolution is issued that pronounces him/her as an accused.

An accused has a right to:

- get a copy of the resolution on pronouncing him/her as an accused and on an appointing expertise.
- make statements concerning the crime he/she is accused of or refuse to make such statements;

[28] CPC of KR. Article 9 part 1.
[29] CPC of KR. Article 40 part 1.
[30] CPC of KR. Article 40 part 5.

— introduce evidence;
— present motions and challenges;
— make statements in his/her native language or the language he/she speaks;
— use the services of an interpreter;
— use services of a defense counsel, including instances of court's deliberation over a petition of the investigative officer to choose a measure of restraint in the form of taking the defendant into custody;
— participate in investigative proceedings undertaken upon his/her or his/her counsel's motions;
— become familiar with an expert's opinion;
— communicate freely with his/her lawyer in private and without any frequency and duration of meetings limitations. limitation of the;
— become familiar with all the case materials and take notes of the necessary information upon completion of the investigation;
— file complaints about actions of an officer at the agency of preliminary investigation, on actions and decisions of an investigator or a prosecutor;
— intercede with a request for considering his/her criminal case by a court of jury if he/she is accused of committing a crime where punishment is a life sentence.[31]

Upon every delivery of a suspect to a TDF and upon complaint is received from the suspect/lawyer/relatives about the suspect being physically abused by workers of the body of inquiry and investigation, he/she shall be subject to an obligatory medical examination followed by a preparation of a relevant document. The responsibility of conducting a medical examination is under the TDF or IDF administration.
.[32]

Involvement of a defense counsel is provided from the moment of the first interrogation of the suspect/accused or factual detention of the suspect/accused. If an appearance of a legal counsel chosen by the suspect/accused is not possible within 24 hours from the moment of factual detention or custody, the investigator has the right to suggest that the suspect/accused should invite another counsel or takes measures to appoint a counsel through a professional organization of lawyers.[33]

The Law of the Kyrgyz Republic "On the procedure and conditions of holding persons detained on suspicion of offenses in custody"[34] guarantees the suspects/accused the following rights:[35]
— to become familiar with the text of the Internal Regulations, including their rights and obligations, the mode of custody, disciplinary requirements, submission of proposals, applications, complaints and so on;
— to security of the person in custody;
— to a personal appointment with the head of the detention facility, his deputies or persons authorized by him;

[31] CPC of KR. Article 42 part 1.
[32] CPC of KR. Article 42 part 7.
[33] CPC of KR. Article 44 parts 3, 4.
[34] Law of KR of October 31, 2002, No150. As amended by Laws of KR of June 11, 2003, No.100, August 13, 2004, No.124, August 19, 2004, No.158, June 25, 2007, No.91, Decree of the Provisional Government of KR of September 17, 2010, ВП №128, Law of KR of July 14, 2011, No.99.
[35] Law of KR on the procedure of holding in custody. Article 16.

- to a meeting with a legal counsel, relatives and other persons listed in the CPC of KR;
- to keep the documents and records related to the criminal case or the issues of implementation realization of their rights and legitimate interests, with the exception of those documents and records that may be used for illegal purposes or may contain information constituting state, official or other secrets protected by the law;
- to submit suggestions, statements and complaints to instances, including court, on the rule of legality and validity of being in custody and violations of their legitimate rights and interests;
- to engage in correspondence and be able to use writing accessories;
- to receive free food, household and medical-sanitary provision, including during the period of their participation in investigative actions and court proceedings;
- to 8-hour sleep at night time during which their participation in procedural and other actions is prohibited, except as provided for in the CPC of KR;
- to enjoy a daily walk of at least one hour in duration;
- to make use of personal belongings in lists and quantities determined by the Internal Regulations;
- to use the literature and periodicals from the library at the custodial facility or acquired through the administration of the facility in commercial networks, as well as board games;
- to exercise religious rites on the premises of holding the suspects/accused in custody, and have classic religious literature, objects of religious worship at their disposal. The above steps must not violate the rights of other suspects and accused persons.
  Note: classical religious literature refers to literature that does not incite ethnic, racial or religious enmity;
- to invite, through the administration of the custodial facility, clergymen for exercising religious rites;
- to be engaged in self-education and use specialized literature, including that in their personal ownership;
- to receive parcels and deliveries;
- to engage in physical activities (exercising, sports games, athletic gymnastics, etc.);
- to respectful treatment by employees of the custodial facility;
- to participate in civil law transactions.

The accused against whom custody has been applied as a preventive measure and those held in IDFs and prisons have additional rights:

- to subscribe to newspapers and magazines and to receive them;
- to send and receive money transfers;
- to purchase food and necessity items in the stores (kiosks) at the IDF (prison) or through the administration of detention facilities in the commercial network;
- to enter into and dissolve marriages, to participate in other family and legal relations, provided this does not contradict the law.

The same provisions are given in the Internal Regulations of IDFs under the penal correction system of the Kyrgyz Republic.[36]

[36] Approved by Resolution of the Government of KR of August 30, 2006, No.631 (amended as of January 21, 2013).

However, despite all of the above legislative safeguards for the rights of detained suspects and defendants, there are gaps in criminal legislation that allow the practice of torture to be used against these individuals.

LEGISLATION AND THE PRACTICE OF DETENTION AND ITS DOCUMENTATION

No norm of the CPC of KR regulates the procedure for exercising operational-search activities, determines the status of those persons involved in these activities. What is more important, no norm provides for their rights and responsibilities. The Law of the Kyrgyz Republic "On operative-investigative activities" does not regulate this issue either. It is not uncommon, when a Criminal Investigations Unit's detective officer does not permit a lawyer's access to a person whose involvement in a crime is being checked, arguing that the person has not been detained but *invited for an interview.* The Law of KR "On operative-investigative activity" does not provide for a lawyer's participation in the exercising operational-search activities in a form of "inquiry".

The widespread practice of a suspect being detained and taken to a police station by operative officers under the pretext of having an interview has shown that often an interview represents an interrogation with the use of torture and ill-treatment. A record of detention in these cases is issued only after the person has been "invited" to the investigative body and interrogated as a witness. It is considered that interrogation of a person as a witness is not detention. Accordingly, there is no obligation on the part of the law enforcement officials to inform the relatives about the detention and ensure the rights of the detainee, such as the right not to testify against himself and to be represented by counsel.

According to article 95 of the CC of KR, the record of detention of a suspect must be concluded not later than three hours after the detainee's *actual arrival at* the facility. Such provision is inconsistent with the international obligations of the State to provide safeguards against torture, according to which formalization of detention should be pursued not from the moment of actual arrival of the detainee, but from the moment of his *factual detention*.

Moreover, in practice, the time of detention considerably exceeds the statutory three hours since the time of actual detention is left unrecorded. As a result, drawing up a record of detention can continue to be laid off for an indefinite period of time. Since implementation of the rights of persons involved in criminal proceedings is directly related to the officially documented recognition of their procedural status, a person detained on suspicion of having committed a crime cannot exercise his rights specified in the CPC of KR, until he has been acknowledged as a suspect in accordance with a record of detention.

For example, the right of an individual being detained or held in custody to be notified of his rights at the moment of detention or arrest, or shortly thereafter, is not respected. Detainees' rights are not read to them at the time of their factual detention, but rather linked to the moment of drawing out of the record of detention. Bodies of inquiry are not required by law to notify a detainee that he is detained, give the reasons for his detention and read him his rights.

In practice, law enforcement officials often hold individuals in custody for a period of more than three hours on some unofficial premises, such as the criminal investigation staff office rooms, basements, patrol cars, with no formalization of a record of detention and with no connection with the outside world (*incommunicado*), his family members, lawyer and medical professionals being

left unaware of his whereabouts. It is in those first hours of detention that people get subjected to torture and ill-treatment.

Example.

Djaiylov Talasbek was detained on October 13, 2011, by four officers of the Criminal Investigation Department of the Toktogul Raion, Jalalabat Oblast. On the way to the police station, Talasbek was tortured. As a result of severe beatings he sustained multiple injuries, including a broken jaw. In this condition, Talasbek was taken to the TDF of the Toktogul Raion DIA. He could not eat, open his mouth or talk. During his detention in TDF, he received no medical assistance, and only 24 days later the TDF Administration took him to the Jalalabat Oblast hospital where he underwent surgery on his maturated jaw removal.

According to the CPC of KR, interrogation must not go on continuously for more than four hours.[37] Interrogation may continue after a break for recreation and meals of at least one hour, while the total duration of a day's interrogation should not exceed eight hours. In the case of medical indications, the duration of interrogation should be determined based on a written opinion of a doctor.

Also, the CPC of KR establishes common rules for carrying out an interrogation, in particular: a person summoned for the interrogation is told in relation to which criminal case he will be questioned, his rights and obligations under the CPC are explained to him, of which an entry in the record of interrogation is then made.[38]

In practice, these provisions are often not respected. The authors of this Report have information about the facts of multiple-hours interrogations without breaks, without water, a chance to sit down or use the toilet.

Example.

Azimzhan Askarov was detained around 11:00 am on June 15, 2010, by two law enforcement officers in the vicinity of his office in the village of Bazar-Korgon, Jalalabat Oblast. Askarov was brought to the DIA of the Bazar-Korgon Raion, where he was interrogated about the events of June 13, 2010. Not satisfied with the replies they received, the DIA officers took him out in the courtyard, where he was subjected to various kinds of humiliation and torture. For several hours, he was continuously tortured by 3 to 4 DIA employees who delivered punches and kicks all over his body.

Then they took him back into the office room, where he was interrogated as a witness, with a formalization of a relevant record. On that evening around 8:00 pm, after long hours of interrogation, Askarov was placed in a temporary detention cell where the beating continued. DIA employees who passed by the cell would call him up and punch him in the chest area. On the morning of June 16, 2010, operative officers continued Askarov's interrogation using threats and violence. They went on beating him all over his body, on his head with the butt of a revolver until he began to bleed from the nose.

A record of his detention as a suspect was compiled only on the evening of June 16, 2010.

According to administrative legislation, the length of administrative detention is counted from the moment of the offender's deliver for formalization of a record, and in the case of a person in a state

[37] CPC of KR. Article 189.
[38] CPC of KR. Article 191.

of intoxication - from the moment of his sobering up.[39] This formulation allows the law enforcement bodies to misuse and illegally delay detention for more than three hours, as the legislation contains no definition of a *"state of intoxication"* and a *"moment of sobering up"*.

It should be noted that detention of 72 hours provided for in administrative legislation contradicts the provision of the Constitution of KR, whereby it has been limited to 48 hours.

In cases of administrative detention, ill-treatment and violence are applied when a person faces unlawful requirements. And his attempts to assert his human rights become a reason for the use of force against him. Regardless of the form it takes to protect one's rights, violence is justified by law enforcement staff as having been triggered by "resistance to a police officer" or "failure to comply".

THE PRACTICE OF JUDICIAL AUTHORIZATION

One of the most significant changes in the legislation of the Kyrgyz Republic has been an introduction of judicial authorization of arrest. While welcoming this move by the State aimed at ensuring compliance with its international obligations, authors of the Report note that the new mechanism of judicial authorization in the country does not fully meet principles and objectives of the *habeas corpus* institute and does not safeguard the right of individuals to protection from arbitrary detention and to freedom from torture.

Despite the constitutionally pinned provisions that every detained person shall be promptly, before the expiry of 48 hours from the moment of detention, brought before the court to resolve *the issue of the lawfulness of his detention*, to date, there is no clear mechanism for consideration by the courts of the legality and validity of grounds for detention. In most cases, judges satisfy petitions of the investigation to choose a measure of restraint in the form of taking detainees into custody based solely on the seriousness of crime - which contradicts international standards in terms of observance of the right to liberty and security of the person.

A court's function to sanction an arrest is limited to the examination of the case materials relating to the circumstances to be taken into consideration in selecting a measure of restraint, such as availability of a permanent place of residence, identification, information on violation of previous measures of restraint, attempts to evade prosecution, etc. In the event of a pre-trial detention, a court has no direct duty to assess the legality and validity of the detention. These substantial issues remain the prerogative of the Prosecutor's Office. Neither it is a court's function to interview a suspect or a defendant in pre-trial detention about possible violations of his rights, in particular - the right to freedom from torture, the right to defense, etc. It remains unclear how the court may have been empowered to react if a suspect demonstrates signs of violence over his body.

The law does not provide the defense with a possibility to present exculpatory evidence or study materials that have been presented to the court by the Prosecutor's Office to authorize an arrest. In addition, to address the issue of authorizing an arrest, availability of a suspect/defendant's counsel is not a prerequisite for holding a trial.

Thus, one can conclude that the institution of judicial authorization in the country does not fully conform with the international standards of judicial control over the legality of arrest and detention,

[39] Administrative Code of the Kyrgyz Republic Article 565.

fair trial principles in general, and does not provide sufficient additional safeguards to protect individuals from torture and ill-treatment.

THE PRACTICE OF OBSERVING THE RIGHT TO COUNSEL

In practice, there is no guaranteed right to prompt and unhindered access of legal counsels to their clients from the moment of their factual arrival at a body of inquiry and the right to a counsel present during interrogation of suspects/defendants. This presents a serious problem and is one of the reasons for the use of torture in criminal investigations.

According to the legislation of the Kyrgyz Republic, criminal procedure is carried out on the basis of contentiousness and equality between prosecution and defense. A person being detained is entitled to legal counsel from the moment of his/her factual arrival at the facility of initial inquiry. Despite the requirement of the criminal legislation that no laws shall be enacted in the Kyrgyz Republic that may violate the adversarial form of procedure,[40] in December 2011, amendments were made to the Law "On the procedure and conditions of holding persons detained on suspicion of offenses in custody" that now significantly impede lawyers' access to their clients. According to article 17 of the above Law, to visit his client, counsel now must produce, among other documents, a written permission from the investigator, the prosecutor or the court. This requirement is a major obstacle to securing the right for protection, since the lawyer is in direct dependence on investigators and prosecutors. Often in practice, obtaining written permission takes a lot of time and effort, especially when cases relate to torture and ill-treatment. Based on the results of monitoring of TDFs by civil society groups, almost all of the interviewed lawyers spoke about difficulties in obtaining permissions to visit their clients.

In accordance with the CPC of KR, a person being detained is entitled to legal counsel from the moment of his/her factual arrival at the facility of initial inquiry.[41] Interrogation of the suspect or accused must be carried out with the participation of a defense counsel. In practice, however, this requirement is often not respected. Based on the results of monitoring the TDFs by civil society groups, 53.9% of those surveyed noted they had no lawyer participating during the interrogation, and 33.2% of the respondents noted an absence of a legal counsel when the court was deciding on the measure of restraint.

Another component of the problem of access to effective protection is participation of the so-called "pocket" or "duty" counsel, who often not only fails to provide qualified legal assistance but also do not get involved in the proceedings and only performs the formal requirements of the law on signing the necessary records and documents. Typically, such lawyers are involved in cases by the appointment of the State and they work in close cooperation with law enforcement authorities, sometimes even encouraging the use of torture and ill-treatment.

Example.
In the course of a criminal investigation on the so-called "SANPA Case", when, during an ethnic conflict in the South of the in June 2010, multiple killings of the Kyrgyz were committed in the vicinity of the SANPA cotton cleaning plant in Jalalabat Oblast, 19 ethnic Uzbeks were charged with and sentenced for these murders. Subsequently, 18 of them were sentenced to the capital punishment of life imprisonment. While carrying out an investigation of the case, law enforcement officials were grossly violating the rights of those

[40] CPC of KR. Article 1 part 4.
[41] CPC of KR. Article 40.

detainees and then defendants. The authors of this Report became aware of the facts of all of the individuals involved in this case being subjected to violent torture. During detention and initial interrogation, none of the detained had a lawyer present. In those cases where counsel was appointed by the investigator, the counsel would take sides with the prosecution. In one case, a lawyer was directly involved in the beating of his client.

Based on the results of monitoring the TDFs by civil society groups, in 62.7% of the cases lawyers participated on appointment by the State and only in 27.5% of the cases lawyers participated based on an agreement with detainees.

The lack of mechanisms to check on the quality of the work of such lawyers leads to the long-standing practice of low-quality free legal aid and the widespread violation of professional standards of counseling ethics.

Hence, in the opinion of the authors of the Report, legal aid provided at the expense of the State at present is not effective.

Criminal legislation provides for the right of a lawyer to communicate with his client alone and without limitations of the frequency and duration of meetings.[42] In practice, however, there are numerous cases when lawyers do not have the possibility of communicating with their clients in full confidentiality.

Example.

Human rights defender Azimzhan Askarov had been kept without any communication with the outside world for two months following his arrest on June 15, 2010. On June 22, 2010, Askarov's lawyer Nurbek Toktakunov tried to meet with his client, but he was refused an access by the TDF personnel who cited the need for a permission granted by a prosecutor or investigator.

When the lawyer turned for permission to the Deputy Prosecutor of Bazar-Korgon Raion, he was refused permission to conduct a confidential interview with Askarov which was explained away by the Deputy Prosecutor to some internal rules.

The lawyer was able to meet with his client only in the presence of the escorts who kept within the distance of hearing the content of their conversation.

During the meeting, the lawyer examined Askarov's body for traces of torture and took photos of several large bruises on his lower back. Askarov whispered and wrote on a sheet of paper that he had been beaten, but was afraid to say this out loud. Askarov said that he had been beaten by police for several days in his first days of detention.

Another evidence of non-compliance with the guarantees of the rights and freedoms of the suspects/defendants in practice comes from the results of monitoring conducted by human rights NGOs.

Thus, in 2011-2012, a number of NGOs conducted with the support of international organizations monitoring of detention facilities and correctional institutions of the country.

On the initiative of the OSCE Centre in Bishkek, a Memorandum of Cooperation was signed on June 7, 2011, among the Ombudsman of KR, the OSCE Centre in Bishkek and Public Foundation "Kylym Shamy". The Memorandum aimed at strengthening the protection of persons deprived of liberty from torture and ill-treatment through joint visits to detention facilities throughout the country without prior notice. Originally, the Memorandum was joined by 7 human rights NGOs.

[42] CPC of KR. Article 42, 48.

The validity of the Memorandum is extended each year and currently involves 15 NGOs and 6 State agencies as its participants.

According to the Memorandum, the Office of the Ombudsman of KR establishes and supports cooperation with non-governmental organizations operating in the Kyrgyz Republic in the sphere of protection of human rights and freedoms, and takes an active part in the initiatives of local and regional human rights institutions aimed at strengthening the capacity of the Ombudsman's Office.

The Year 2011.

From July 1 to November 30, 2011, a large-scale monitoring effort was undertaken with the financial support of the OSCE Centre in Bishkek and the local OSCE Office in Osh, with the active assistance of the Ombudsman and his staff that focused on the situation with the right to freedom from torture in all the 47 TDF in the country. The monitoring results indicated that the conditions of detention and treating persons held in custody did not meet not only the minimum standards for the treatment of prisoners in accordance with international law, but also those of the national law.[43]

It was noted that detainees were kept in conditions that amounted to cruel and inhuman treatment, as was evidenced by the pitiful state of cells, poor ventilation (which was completely lacking in some TDFs), the existence of concrete floors, windows covered with metal plates, insufficient number of beds in cells, lack of bedding items and kitchenware. Whereas the lack of access to drinking water and a possibility to observe the rules of personal hygiene, as well as to meet the natural needs in privacy, in conditions of cleanliness and decency, was construed as degrading treatment of prisoners.

The Year 2012.

In 2012, the participants of the Memorandum decided to expand the range of their visits by including collection and distribution facilities under DIA and IDF of MSEP. It was necessary to include the IDFs of MSEP in the list of sites for monitoring visits because monitoring TDF under DIA alone did not give a full and objective picture of the situation with torture and the scale of torture applied to the inmates held there. While in custody, suspects and defendants were reluctant to talk about torture, fearing reprisals for cooperating with the monitoring groups. Cases of the police beating the defendants for what they told about torture were described in a report on the results of the monitoring of 2011.[44] And only after their transfer to the IDF of MSEP, where access for the police members is restricted, torture victims feel to some extent secure and choose to tell about unlawful methods of investigation applied back there.

The year 2012 monitoring noted improvements of conditions in a number of TDFs in the country achieved through humanitarian assistance from international organizations. Thus, representatives of the International Committee of the Red Cross (ICRC) handed over mattresses, warm blankets, plastic garbage containers, hygiene kits, water heaters, etc. With the financial support of the OSCE, minor and major repairs of the buildings and premises were carried out in a number of TDFs.

Unfortunately, along with the positive changes, the monitoring team noted examples of negative practices, when the poor conditions in detention facilities observed in 2011, remained unchanged

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[43] Monitoring results Report "Torture prevention in temporary detention facilities under the law enforcement bodies of the Kyrgyz Republic". Bishkek 2011.

[44] Monitoring results Report "Torture prevention in temporary detention facilities under the law enforcement bodies of the Kyrgyz Republic. Monitoring, responding, rehabilitating". Bishkek 2011.

and, in some cases, even worsened (TDFs under DIAs in Karasu, Jety-Oguz, Tyup and Kadamjai Raions).

The 2012 monitoring findings make it clear that the situation with the torture of suspects and defendants has remained unchanged.

Analysis of the information gathered during the interviews with suspects and defendants showed that one out of every four (25.4%) among the *respondents held in TDFs under DIA*, claimed that he had been tortured during his detention up to the time of his committal to the TDF as a suspect. At that, twice as many respondents (59.2%) among those *held in custody in the IDFs of MSEP* stated that they had been tortured during the same period, i.e. from the moment of detention and prior to their placement in custody in a TDF. [45]

A comparison of these indicators confirms the earlier conclusion that, remaining in the TDF custody, suspects and defendants are afraid to make claims of torture because of their fear of retaliation by the police officers. it must be recognized that their concerns are not baseless. Police members have virtually unrestricted access to the TDFs where victims of torture are held, which has been confirmed by the results of the monitoring in 2011. At the time, cases were documented where detainees were taken out of the TDF at night time and given into disposal of the operative workers who used torture to induce confessions. Other cases involved granting the operative workers the opportunity to interact with detainees on the premises of the TDF.[46] Similar cases were documented in the year 2012 monitoring.

A detailed description of the situation with the observance of the rights and freedoms of persons held in custody in TDFs and IDFs of the country is given below, in the relevant sections of this Report.

In practice, other legislative safeguards of the rights and freedoms of suspects and defendants are not respected either. Detainees held in IDFs virtually have no right to correspondence, telephone calls and visits by their relatives without permission from the investigator, regardless of the duration of their detention.

According to the review of cases of torture and ill-treatment for 2009-2012 compiled by the Public Foundation "Voice of Freedom" and the Centre for the protection of human rights "Kylym Shamy": only two of the 70 respondents were given the opportunity to communicate with their family members while in custody in a TDF and 9-people - while in an IDF.
An analysis of the responses to a survey involving 61 respondents contained in TDFs and IDFs shows that 45 of them were not provided with a lawyer, 24 had legal counsel in the course of the criminal investigation, 16 people refused to answer the question of whether a lawyer had been involved.

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[45] Report "Observance of the right to freedom from torture in closed-type institutions of the Kyrgyz Republic". Monitoring, responding, rehabilitating". Bishkek 2012.
[46] Monitoring results Report "Torture prevention in temporary detention facilities under the law enforcement bodies of the Kyrgyz Republic". Bishkek 2011.

Practice has shown that, apart from the beatings and exerting psychological pressure on detainees, there are other ways of forcing into giving confessions. Thus, in cases when detainees are participants in a methadone-substitution therapy program and they are held in custody in TDFs where there is no access to methadone, these substitution therapy clients experience withdrawal symptoms that include severe pain. This state of theirs is taken advantage of by the law enforcement officials who force such detainees into signing confession statements.

Example.
In May 2013, members of the Public Foundatiion "An Alternative in Narcology" spent 5 hours seeking permission to pass methadone to their program client held in custody in the TDF of the City Department of Internal Affairs of Bishkek. And only following numerous calls to all types of authorities, including the Ministry of Internal Affairs, did they manage to pass the methadone to the detainee in question.

4. In connection with the previous conclusions and recommendations of the Committee, please indicate what steps have been taken as a whole to prevent acts of torture and ill-treatment. In this context, the Committee noted that in July 2000 during the consideration of the initial report of the State party to the International Covenant on Civil and Political Rights, the Human Rights Committee expressed serious concern about cases of torture, ill-treatment and abuse of power by law enforcement officials, and requested State party to amend its legislation and ensure that acts of torture are indictable offenses that all allegations of torture by officials properly investigated by independent bodies, and those responsible for such acts should be prosecuted. The Committee also requested to include a provision in the law for medical examination of detainees, particularly those held in pre trial custody, in order to ensure that such persons are not subjected to ill-treatment (ibid). Please indicate what steps have been taken to meet these specific recommendations. Please indicate whether there is a central register of all complaints of torture and acts of ill-treatment allegedly committed by law enforcement officials. Please provide information on the number of statements about the acts of torture and ill-treatment allegedly committed by members of the State Committee for National Security, and the results thereof.

In 2012 changes and amendments were made in the disposition of Article 305-1 of the Criminal Code (“torture”), as well as the sanctions became tougher for the commission of the crime.[47]

However, at present, the problematic aspects still remain in the practical application of this article, namely, for ill-treatment to be classified as “torture”, in accordance with the definition contained in article 1 of the Convention against Torture, in Article 305-1 of the Criminal Code the presence of severe pain is not required that seemingly allows you to prevent other forms of ill-treatment, linked or leading to torture.
Thus, the disposition of Article 305-1 of the Criminal Code does not allow to distinguish between “torture” and “cruel, inhuman or degrading treatment or punishment”, currently prosecuted under such Articles of the Criminal Code as “negligence”, “coercion to testify” or “abuse of power”, does not prohibit neither torture within the meaning of Article 1 of the Convention against Torture or

[47] See answer to question No. 1 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

other cruel, inhuman or degrading treatment or punishment within the meaning of Article 16 of the Convention against Torture.

This leads to the fact that investigators, in fear that the prosecutor or the judge would not agree with his opinion on the issue of qualification of acts under Article 305-1 of the Criminal Code and would return the case to fill the gaps of investigation, prefer not to use this article, bearing in mind that a number of returned cases is an important factor in the assessment of the quality of his/her work. As a result, torture continues to be classified as a habitual “negligence” or “abuse of power”.

In accordance with the Criminal Procedure Code of the Kyrgyz Republic criminal cases of malfeasance, including the crimes of torture and ill-treatment, are investigated by investigators of the Prosecutor's Office.[48]

From the review of cases of torture and ill-treatment for the years 2009-2012 of the Public Foundation “Golos Svobody” (Voice of Freedom) and the Center for the Protection of Human Rights “Kylym Shamy”:
Of the 70 respondents who have been tortured or ill-treated, 68 victims filed a petition to institute criminal proceedings on charges of torture. In 56 cases, the preliminary inquiry was conducted by prosecutors, in 1 case the allegations of the victim were investigated by officers of the same district department of interior affairs and in 2 cases of torture and ill-treatment investigation was carried out by the Investigative Department of the State Penitentiary Service, in other words by the same agency.

According to the criminal procedure law the examination can be conducted for the suspect, accused, victim or witness for the detection of distinguishing marks, traces of the crime, injury on the human body, detection of intoxication or other properties and attributes that are relevant to the case, if it does not require the production of examination. Investigator issues an order on the production of examination. The examination in conducted by an investigator with presence of witnesses, and where necessary, examination is conducted with participation of a physician or other healthcare professional. The investigator should not be present in the examination of a person of the opposite sex, if an examination is accompanied by taking off the clothes by the person. In this case, the examination is conducted in the presence of witnesses, a doctor of the same sex.[49]

According to statistics from the Information and Analytical Center of Ministry of Internal Affairs of the Kyrgyz Republic criminal case have not been instituted or investigated under article 305-1 of the Criminal Code for the period 2004-2009 by the investigative departments of law enforcement bodies of the country.

To the request of Kylym Shamy from 26.06.2013 #4-237 on the number of allegations of torture by the State Committee for National Security of the Kyrgyz Republic the General Prosecutor's Office in its official response stated that “in the absence of data, it is impossible for the General Prosecutor's

[48] Article 163 of the Criminal Procedure Code of the Kyrgyz Republic
[49] Article 180 of the Criminal Procedure Code of the Kyrgyz Republic

Office to provide information". However, human rights organizations aware of the facts of torture by the current employees of the State Committee for National Security of the Kyrgyz Republic.[50]

5. What administrative, legislative, judicial or other measures have been taken in accordance with Article 2 of the Convention, in response to requests by the Human Rights Committee to amend the state's strategy in relation to: a) investigate all allegations of torture; b) the establishment of independent bodies for the implementation of oversight and investigations, and c) medical examinations of detainees, particularly those held in pre trial custody.

a) The investigation of all allegations of torture

In accordance with the Convention against Torture State is obligated to investigate complaints and reports of torture. The Committee against Torture states that it is necessary to have a formal written complaint in order for the state to have an obligation for investigation of such cases. The Committee also emphasizes that such complaints and reports of torture must be carried out immediately.

In accordance with the criminal procedure law motives for instituting criminal proceedings are statements of citizens, a statement of guilt, a message of the officer of the organization, the message in the media, as well as the direct detection of signs of an offense by the body of inquiry, the investigator, the prosecutor.[51] The allegations of torture are enough as a basis for criminal prosecution.

However, in practice the situation with receiving and considering complaints of torture is different than prescribed by law. The applicant is often confronted with problems with the formal registration of his/her statement. Human rights defenders are also aware of practice, when the victim under various pretexts is forced to take back a statement on the use of torture against him.

From the review of cases of torture and ill-treatment for the years 2009-2012 of the Public Foundation "Golos Svobody" (Voice of Freedom) and the Center for the Protection of Human Rights "Kylym Shamy":
Of the 70 respondents who have been tortured or ill-treated, 68 victims filed a petition to institute criminal proceedings on charges of torture. However, during the preliminary examination or investigation 8 victims refused to support the charges against the police officers.

A bright example of an ineffective investigation of torture complains is a case of a human rights defender Azimjan Askarov. Until now prosecutor's agencies and courts refuse to conduct thorough and effective investigation.[52]

According to the order of the Prosecutor General of the Kyrgyz Republic "On strengthening the prosecutorial oversight of the constitutional guarantee of the prohibition of torture and other

[50] See answer to question No. 4 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
[51] Article 150 of the Criminal Procedure Code of the Kyrgyz Republic.
[52] See annex #52. Information provided by a lawyer (Vahitov V.A.) on prosecutor's offices investigation process of a statement of a journalist about a fact that Askarov was subjected to torture.

inhuman, cruel or degrading treatment or punishment" of April 12, 2011, the prosecution bodies are requested to respond immediately to every case of statement or reports of torture with a careful study of the arguments set out in them.

In addition, on September 6, 2011 the Prosecutor General of the Kyrgyz Republic made a decree, which has prescribed that in establishing evidence of a crime by the use of torture and other inhuman, cruel or degrading treatment or punishment there is an urgent need to initiate criminal proceedings by taking them under special control, as well as to send to the prosecutor general's office for further investigation of all materials on torture and other inhuman, cruel or degrading treatment or punishment, in which there is a decision to refuse a criminal case, as well as suspension and termination of criminal cases of this category, within ten days after the decision is sent to prosecutor general's office to be examined for the validity and legality of the decision, with the attached information and findings.

It is necessary to note the Development Strategy of the prosecution bodies of the Kyrgyz Republic until 2015, which "represents the "road map" that defines the process of modernization of the prosecution, to take measures based on the need, carry out the reform of the prosecution in order to protect the rights and freedoms of the individual, interests of the state, increase the efficiency of the prosecution, optimize surveillance activities and develop support resources of the services in the prosecution".[53] A specific plan of action to implement the Strategy is approved. These efforts of the General Prosecutor's Office suggest that any significant changes in the implementation of prosecutorial supervision over observance of the rights and freedoms of detainees, including the right to freedom from torture, can realistically be expected in the near future, but some - in the long term.

In practice, the person in custody does not have an opportunity to file complaints due to various reasons such as lack of facilities for making complaints (no paper, pens or appropriate lighting), the fear of being punished, the lack of competent attorneys, general distrust of the system. The vast majority of victims of ill-treatment and torture prefer not to submit statements and reasonably believe that such action is not only useless, but also dangerous.[54]

As for the preliminary examinations, then the law enforcement officers are generally limited to obtaining explanatory notes from the law enforcement officials who, of course, deny the use of torture, after the agency making an inspection concludes that there are no grounds for a criminal case. All the necessary investigative actions to establish the facts stated by the applicant are not carried out and often clear evidences of torture are ignored.

Ones of the most common reasons, that are cited by the law enforcement officers when they refuse to open a criminal case are as follows: a) the infliction of bodily injuries during the arrest of the applicant as a result of active resistance to law enforcement authorities; b) the infliction of bodily injuries by the applicant before his arrest or in the cell; c) the infliction of bodily injuries by himself.

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[53] The development strategy of the prosecution of the Kyrgyz Republic until 2015. *Approved by Order of the General Prosecutor of the Kyrgyz Republic on January 18, 2012 No. 4*

[54] The report, "Freedom House", "The guarantees against torture in Kyrgyzstan." Kyrgyzstan, 2012.

Findings of such inspections reveal, at best, a disciplinary violation, even if they caused illegal detention of the person, and usually do not result in criminal charges.

From the review of cases of torture and ill-treatment for the years 2009-2012 of the Public Foundation "Golos Svobody" (Voice of Freedom) and the Center for the Protection of Human Rights "Kylym Shamy":
Of the 70 respondents who have been tortured or ill-treated, 68 victims filed a petition to institute criminal proceedings on charges of torture. However, in 37 cases they were denied a criminal prosecution on the following grounds: 26 - in the absence of evidence of a crime, as well as the absence of corpus delicti, 4 - in the absence of forensic examination, 4 - in connection with the internal investigation. One victim refused to support his/her allegations of torture against him/her. In 2 allegations of torture there was no response from the General Prosecutor's Office.

b) The creation of independent bodies to oversee and conduct investigations

One of the conditions for the prompt, thorough and effective investigation into the allegations of torture is presence of a competent impartial body, independent of the alleged suspects and of the law enforcement agency in which they serve.[55]

According to the Criminal Procedure Code of the Kyrgyz Republic the investigation of crimes of torture and ill-treatment is carried out by investigators of the Prosecutor's Office.[56] In practice, allegations of torture are usually filed at the local prosecutor's office, which at the same time conducts the criminal prosecution of a person in custody and supervision of the legality of the investigative activities of a criminal case by the investigating authorities.

When establishing the facts of torture during preliminary investigation, the prosecution actually weakens the position of the victim, questioning the legality of the extracted evidence of guilt and the possibility of their use in court. Thus, the victims of torture in cases where the investigation is conducted against them in criminal cases do not have any objective and effective remedies, where their complaints would be properly investigated.[57]

According to the above-mentioned development strategy of the prosecution bodies of the Kyrgyz Republic until 2015, the structure of the Institute of investigator at the prosecutor's office is currently being revised, namely - investigative unit of the General Prosecutor's Office with a vertical subordination of all the investigators of the Prosecutor's Office was formed. In this regard, all the investigators were withdrawn from the jurisdiction of the district, city, province, Bishkek and Osh, specialized prosecutor's office, with the exception of investigators of the Military Prosecutor's Office and the department of the General Prosecutor's Office involved in internal investigations, because of the specifics of function performed. This measure, in particular, has allowed investigators to withdraw from the jurisdiction of prosecutors of the territorial prosecutor's offices

[55] Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Annex to UN General Assembly Resolution No. 55/89 of 4 December 2000.
[56] Part 4, article 163 of the Criminal Procedure Code of the Kyrgyz Republic
[57] See Annex No. 2 to question No. 5 (b) of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

and limited conflict of interest, providing separation of investigation and supervision over the investigation, and therefore an independence of the investigation.

c) Medical examination of detainees, particularly those held in pre trial custody.

According to the Criminal Procedure Code of the Kyrgyz Republic, each conveyance of a suspect or an accused in the detention center, as well as a complaint received from him, his lawyer, and relatives on the use of physical violence against him by officers of inquiry and investigation, he (a suspect or an accused) shall be subject to mandatory medical examination with records.[58] However, in practice, often a medical examination does not meet the requirements of this procedure, conducted formally or was not conducted at all, if the detainee does not submit complaints. Special forms (template forms) to write down injuries are not used when conducting medical examinations. After visual examination, the doctor fills the certificate, which states: "There are no bodily injuries. The person may be contained in the detention center". This certificate is usually attached to the case file and practically serves as a report of examination.

From the review of cases of torture and ill-treatment for the years 2009-2012 of the Public Foundation "Golos Svobody" (Voice of Freedom) and the Center for the Protection of Human Rights "Kylym Shamy":
Of the 70 respondents who have been tortured or ill-treated, only two indicated that they were examined by a medical professional during the actual arrest or placement in the detention center. In 24 cases a medical examination was not carried out and 44 people refused to answer this question.
61 respondents out of 70 were taken to the detention center. However, only 5 of them indicated that they were examined by a medical professional during placement in the detention center. One victim was examined by an independent expert, the others pointed out that the doctor has made a conclusion without examining them.

Health care workers often do not record all the injuries. [59] Such actions of doctors are explained by their dependence on the state system and a low level of professional training. As a result it is almost impossible to document the physical damage for those affected by torture and to prove the use of torture, particularly in cases where acts of violence do not leave marks, scars or other physical evidence.

6. The Committee took into account that in November 2004 the Committee on the Rights of the Child expressed concern that in the State party person under the age of 18 years is still allegedly subjected to torture and ill-treatment during his detention in police custody or in awaiting trial, the access of young people held in police custody to a lawyer and / or medical services as well as contacts with their families, also appears limited; complaints procedure in respect of such abuses do not take into account the interests of the child and are not effective, as no sanctions, seem, to apply. Please specify which specific steps were taken by the State party to address these specific issues. The information available to the Committee indicates

[58] Article 40 of the Criminal Procedure Code of the Kyrgyz Republic
[59] *See Annex No. 3 to question No. 5 (c) of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).*

that juveniles are subject to ill-treatment during detention and kept in overcrowded cells with adult prisoners. What measures are taken to address these issues?[60]

7. Please indicate how juveniles are, in practice, separated from adults in detention. The information available to the Committee indicates that women in detention are subject to particularly harsh treatment. What measures are being taken to address this situation? What measures are taken to ensure that women in detention get necessary health care?[61]

9. Please indicate whether the organizational structure and the prerogatives of the Office of the Ombudsman of the States party comply with the Paris Principles. Please clarify whether the Office has sufficient human and financial resources, and provide relevant statistical information, including complaints received and their results.

The organizational structure of the Office of the Ombudsman of the Kyrgyz Republic complies with the Paris Principles, adopted for national human rights institutions. The number of officers of the Ombudsman of the Kyrgyz Republic is 79 people. There are authorized representatives of the Ombudsman in all regions of the country. Each province has its offices with a staff of 3 to 6 people.

The state allocates funds for the successful service of the Ombudsman of the Kyrgyz Republic in the amount of 27 million soms a year. However, full funding is only for items such as salaries, utilities, taxes. On other items the funds are provided in the amount of 25-35% of expenses, which greatly reduces the efficiency of the Office.

But, at the same time, there is a major discrepancy with the Paris principles that is laid down in the Law of the Kyrgyz Republic “On Ombudsman (Akyikatchy) of the Kyrgyz Republic”. Paragraph 7 of Article 7 of the Law “The early termination of the powers of the Ombudsman (Akyikatchy), Deputy Ombudsman (Akyikatchy)” provides that in the case of disapproval of the report of the Ombudsman (Akyikatchy) by the Jogorku Kenesh (Parliament) of the Kyrgyz Republic Ombudsman of the Kyrgyz Republic may be dismissed from office. This rule makes the Ombudsman of the Kyrgyz Republic to take into account the balance of political powers, and, at times, does not allow the right to express his/her views on issues in the field of protection and the state of human rights and freedoms in the country.[62]

Article 3

10. Please provide statistics on the number of asylum-seekers and refugees in Kyrgyzstan during the reporting period, broken down by country of origin.

During the period of 1995-2012 the relevant authorities of the Kyrgyz Republic have received 20,000 appeals from citizens of Tajikistan, who had sought protection in the civil war in that

[60] Shadow report of NGOs on compliance with obligations in respect of children under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Kyrgyz Republic, October 2013.
[61] Ibid.
[62] *See Annex No. 4 to question No. 9 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).*

country. To date, the Kyrgyz Republic has granted citizenship to about half of these people, while the remaining refugees have voluntarily returned to their homeland.

Approximately 200 refugees, mostly Afghans were granted citizenship of the Kyrgyz Republic. The Kyrgyz Republic is one of the countries where refugees of Afghanistan seek protection. As of June 20, 2013 there are more than 700 refugees from this country.[63]

Since 2008, the joint work of the authorities and civil society in the framework of the UNHCR has identified and resolved several tens of thousands of civil cases. To date, approximately 21,000 people, still, are stateless or at risk thereof. In September 2009, the Government of the Kyrgyz Republic, with the support of UNHCR, adopted a comprehensive national plan of action for the prevention and reduction of statelessness, which has been revised and updated in June 2011.[64]

The Kyrgyz Republic is one of the first countries in Central Asia, which has adopted a National Law on Refugees (2002). In 2005, about 450 refugees from Andijan (Uzbekistan) have been granted international protection in the Kyrgyz Republic. Subsequently, they were resettled in third countries.

The number of refugees on the territory of the Kyrgyz Republic as of September 1, 2011 is 190 people, including from Afghanistan - 183, other countries - 7.
As compared to 2010, the number of refugees has decreased by 23 persons and refugees totaled 213, 2009 – by 58 people (248 refugees), 2008 – by 72 people (262 refugees), 2007 - 3.6 times (678 Refugees).

As of June 19, 2013, there were about 600 refugees in the country; most of them came from Afghanistan. Another 182 people do not fall into this category, however, claim to this status and are seeking refuge in the country. It is predicted that after the withdrawal of international troops from Afghanistan, the flow of refugees from that country will increase.[65] The number of asylum seekers is 227 people, including 27 Afghans, 3 Iranian citizens, 1 citizen of Pakistan, 3 citizens of the Russian Federation (Chechnya), 2 Syrian citizens, 1 citizen of North Korea, 188 citizens of the Republic of Uzbekistan and 2 stateless citizens of the Republic of Uzbekistan.

For the period January-August 2013 67 applications for refugee status were registered from 126 foreign nationals. The following decisions have been made after the consideration of 51 applications for refugee status (88 people): to grant refugee status - 1 person, to deny refugee status - 58 people, to terminate the consideration of the petition - 29 people.

From April 22 to 26, 2013, UNHCR in Kyrgyzstan, together with the Ministry of Emergency Situations of the Kyrgyz Republic held a meeting of the Working Group on Planning for emergency situations in the Kyrgyz Republic. Senior officials from various government and UN agencies attended the four-day seminar, during which the plan was developed for a possible influx of

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[63] "Kyrgyzstan is celebrating World day of refugees under slogan 'One family separated by the was is too much", article published on 20 June 2013, available at: http://www.un.org.kg/ru/-/news-releases/article/65-news-center/5846-kyrgyzstan-otmechaet-vsemirnyj-den-bejencev-pod-lozungom-1-semya-razluchennaya-vojnoj-eto-slishkom-mnogo.
[64]General information on UNHCR activities in Kyrgyzstan available at http://www.unhcr.kz/rus/central-asia/kyrgyzstan/.
[65] «Kyrgyzstan – paradise for refugees», article published on19.06.2013, available at http://www.easttime.ru/news/kyrgyzstan/kyrgyzstan-rai-dlya-bezhentsev/4158.

refugees. The working group has identified and made a plan for the most likely scenarios for the influx of refugees to take the necessary measures.

Article 10

16. Please indicate what kind of training on human rights, including guidance on the prohibition of torture and ill-treatment is currently provided for a) judges and prosecutors, including on the prosecution and punishment of perpetrators of acts of torture in proportion to the severity of the crime for b) health professionals, including specialized training in the preparation of forensic findings in respect of acts of torture and other forms of physical and psychological abuse, as well as for c) law enforcement officers, including border and customs services. Please also include information on any of the existing instructions on the prohibition of torture and ill-treatment. Please indicate whether the absolute prohibition of torture is reflected in educational materials dealing with the rules, regulations and methods of interrogation, and whether there is any special training for health professionals on how to identify signs of torture and cruel, inhuman or degrading treatment, in accordance with the requirements of the Istanbul protocol.

a) Training of judges and prosecutors, including the issues on prosecution and punishment of perpetrators of acts of torture in proportion to the severity of the crime.

As mentioned above, in April 2011 the General Prosecutor's Office of the Kyrgyz Republic issued a Decree "On strengthening the prosecutorial oversight of the constitutional guarantee of the prohibition of torture and other inhuman, cruel or degrading treatment or punishment", and on September 6, 2011 - Instruction prescribing that there is an urgent need to initiate criminal proceedings in establishing evidence of a crime by the use of torture and other inhuman, cruel or degrading treatment or punishment by taking them under special control.

The General Prosecutor's Office in its official response #4-237 to PF "Kylym Shamy" inquiry as of 26 June 2013 noted that in 2011 the guidelines "On the investigation of torture and other inhuman, cruel or degrading treatment or punishment" were developed by the General Prosecutor of the Kyrgyz Republic and sent to prosecuting authorities of the country for official use only and is considered as a restricted information.

In its response (outcome letter #01-11/941 dated 01.10.2013) to an inquiry of Public Foundation "Golos Svobody", Supreme Court of the Kyrgyz Republic informed that training center under the Supreme Court of the Kyrgyz Republic systematically conducts trainings for judges of local courts of the Kyrgyz Republic in the sphere of human rights observance. From 20 to 25 May 2013 in Bishkek, Training center under the Supreme Court of the Kyrgyz Republic together with the Central Asia Regional Representation of the UN OHCHR conducted a seminar on topic: "Principles and standards of human rights in administration of justice". 26 judges of local courts participated at it.
Moreover, 17-18 July 2013 Training Center at the Supreme Court of the Kyrgyz Republic together with the Center of human rights protection "Kylym Shamy" conducted seminars in all the regions of the Kyrgyz Republic on a topic "Ensuring guarantees to a right of freedom from torture in the Kyrgyz Republic: problems and perspectives".

b) Training of health care professionals, including specialized training in the preparation of forensic findings in respect of acts of torture and other forms of physical and psychological abuse.

In April 2012, with the support of the OSCE Centre in Bishkek and the “Freedom House”, two trainings were conducted for doctors of State Penitentiary Service, which included the heads of health units, doctors and paramedics of remands and correctional facilities of the country by experts of NGOs on human rights at the study center of State Penitentiary Service under the Government. Training sessions were devoted to the topics: “Effective medical documentation of torture and ill-treatment in Kyrgyzstan” and “Human rights and effective medical documentation of torture.”

However, according to an official response of State Penitentiary Service under the Government as of July 17, 2013 the staff of the penal system did not have training on standards of Istanbul Protocol.[66]

Two more trainings were conducted in Bishkek in September 2013 with the support of the above mentioned donors on the practical application of developed and approved standard form of medical examination by the medical staff of the country's prison system.

c) Training of law enforcement officials, including border and customs services.

Training for officers of State Penitentiary Service was held on October 18, 2012 at the Study Center of State Penitentiary Service. During the training participants were given information about the definition of “torture”, difference of torture from other ill –treatments, provisions of the new Law “On the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, according to which the National Center for the Prevention of torture will soon begin to operate and its employees will be entitled to free access to all closed institutions in the country at any time and without prior notice.

The Police Academy of the Kyrgyz Republic in its official response as of 05.07.2013 #31/857 (to an inquiry of Kylym Shamy from 26.06.2013 #4-236) has released information concerning the creation in 2003 of the Center for Human Rights and Public Oversight of the activities of the Ministry of Interior Affairs as part of an OSCE project “Strengthening the capacity of the Police Academy”. To the request the Police Academy of the Kyrgyz Republic in its official response noted that the Police Academy is an educational institution that trains qualified personnel for law enforcement bodies, capable of addressing issues of public safety and crime at proper professional level, however, does not have any specific instructions on methods of interrogation practices and the conditions of detention, since it is a state institution of higher professional education and carries out its activities in accordance with state educational standards.

It should be noted that the request addressed to the Interior Ministry of the Kyrgyz Republic was not answered in an official form.

Article 11

[66]Response of the State Penitentiary Service under the Government of the Kyrgyz Republic of July 17, 2013, Reference No. 100/01-B-2.

18. Please provide information on the procedures of systematic review of the rules, instructions, methods and practices of interrogation and detention conditions in order to prevent torture in accordance with article 11 of the Convention and the frequency of such review.

According to the official response #236 of the Police Academy of the Kyrgyz Republic as of 05.07.2013 to an inquiry of the Center of human rights protection "Kylym Shamy", it follows that there are no specific rules, instructions, and methods and generalized practice of interrogation in order to prevent torture in law enforcement bodies.

19. Despite some possible progress, the information before the Committee highlights the need for significant improvements in prison conditions, including in the context of temporary or pre-trial detention, or "detention center". The conditions of detention centers in Cholpon-Ata, Karakol and Nookat are of particular concern. What measures are being taken to address these problems, which include dilapidated infrastructure, lack of proper heating and water, overcrowding, excessive length of detention and corruption?

After a presentation of the results of monitoring on compliance with the right to protection from torture and ill-treatment in the detention center of the country in 2011,[67] which were marked by poor living conditions in the detention center, international organizations had provided humanitarian assistance to several detention centers of the country.

Thus, in 2012 many detention centers of Department of Interior Affairs (hereafter DIA) have received mattresses, blankets, plastic garbage containers, hygiene kits (soap, toothpaste and toothbrush), electric water heaters with the support of the ICRC.[68]

The detention center of Departments of Interior Affairs of Bishkek city with the assistance of the ICRC has received surveillance cameras, new doors, a new electric stove and an electric generator. With the financial support of the OSCE some detention centers had been renovated or their buildings and premises were fully repaired. For example, in October 2012, there was a renovation of the detention center in Ton district Departments of Interior Affairs (DIA). The cells and rooms were whitewashed; the rooms become clean, radios were installed in the corridor. After a major renovation conditions were greatly improved in all detention centers of Chui province DIA, Karakol city DIA, Naryn city DIA, detention centers of Issyk-Kul, Aktala, Jumgal, Kochkor district DIA.[69]

A bathroom (a sink and floor toilet) was installed in each cell of the detention center of Issyk- Ata district DIA. A significant improvement in living conditions in the detention center of Uzgen district DIA should be noted, whose premises were repaired within the OSCE project "Community Security Initiative" with the support of the Swiss Agency for Development and Cooperation. A shower in the detention center of Kochkor district DIA, built by the OSCE Centre in Bishkek, was fully repaired.[70]

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[67] Report on the results of monitoring, "Prevention of torture in police custody of Internal Affairs of the Kyrgyz Republic." Bishkek, 2011.
[68] The report, "Respect for the right to freedom from torture in closed institutions of the Kyrgyz Republic. Monitoring. Response. Rehabilitation", Bishkek, 2012.
[69]Ibid.
[70]*The report, "Respect for the right to freedom from torture in closed institutions of the Kyrgyz Republic. Monitoring. Response. Rehabilitation", Bishkek, 2012.*

A number of detention centers improved the conditions for prisoners from their own funds or funds of state institutions. For example, the staff of At-Bashy district and the Aravan district DIA repaired their premises. Upon the request for sponsorship support the administration of the detention center of Panfilov district DIA received mattresses and other bedding items from Medical School of Kara-Balta city.[71]

In 2012, Talas Province DIA has installed a boiler room and has connected it to the detention center. Observers noted that in comparison with 2011 the cells in 2012 became warmer and dryer. A room for meetings was built on the territory of the detention center.[72]

One of the main problems identified during monitoring in 2011 in the detention center of Karabuura district DIA - the problem of sewage treatment plants and rapid filling of drain holes due to the high water level, was resolved when the detention center was connected in 2012 to a central sewage system.[73]

However, not all detention centers have improved the situation with the state of the rooms and buildings. Poor living conditions in the detention center of Kara-Suu and Kadamjay district DIA were still recorded in the monitoring results. In the cells for administrative detainees of the detention center of Ak-Tala district DIA there is no floor covering, people detained sleep on mattresses lying directly on the concrete floor. Windows are not glazed; window openings are hammered with metal plates with holes drilled in them. There is no shower. There is no water in the building of the detention center; water is brought from the yard of the district DIA, where there is a well. The situation has not changed in the detention center of Jeti-Oguz and Tup district DIA where there is still no shower, and in the walk yard there is no lean-to from the rain and snow. The detention center of Balykchy city DIA also lacks of shower and a walk yard.[74]

20. Are the conditions of detention and treatment in modern detention centers under the authority of the Interior Ministry in line with national and international standards in respect of a) medical examinations, b) the number of prisoners per cell, c) food and sleep, d) lighting, ventilation, heating, sanitation, and access to fresh air?

a) Due to the fact that only two detention centers of the Kyrgyz Republic have a staff unit of physician, medical examinations of prisoners is usually held in the district hospitals.

b) It should be noted that it is the common practice when people previously not subject to criminal liability detained together in a cell with people repeatedly convicted of serious offenses. In addition, in some detention facilities juveniles are detained with adult individuals.
During the monitoring in 2011 it was discovered that one of the cells of the detention center in Toktogul district DIA detained five people, while the room was designed only for four beds. One of the 5 detainees was previously convicted and was serving his sentence, two were juveniles and one

[71]Ibid.
[72]Ibid.
[73]Ibid.
[74]Ibid.

young man belonged to the category of "excluded". His sleeping place of 0,3x0,4 m was located next to a bucket for defecation.

An area of a cell in the detention center of Uzgen district DIA is, on average, 11 m, and the number of people contained in each of these cells is 10 people, in other words, one person has an area less than 1.1 square meters.[75]

c) There are no changes for the better in most of the detention centers in relation to the quantity and quality of food provided to prisoners. For example, prisoners held in the detention center of Naryn city DIA get only tea and bread, there is no hot meal available. The administration of the detention center, as well as other detention centers of DIA, where there is no hot meal for inmates, explains this by lack of funding. For example, a detention center of Tup district DIA allocates 40 soms (less than one U.S. dollar) per prisoner a day. Basically, relatives, who themselves often face severe financial difficulties, have to provide the food.[76]

d) Lack of or insufficient ventilation, still remains unresolved in the detention centers of Balykchy city DIA, Jeti-Oguz, Suzak, Nooken, Bazar-Korgon and Toguz-Toro district DIA.[77]

As detention centers of Suzak and Kara-Suu district DIA located in the basement, there is no air ventilation in the cells and offices, ventilation system does not work properly, thus it is very hot inside. There were complaints about the lack of proper ventilation from the staff and inmates of the detention centers of Nooken and Bazar-Korgon district DIA.[78]

A problem with natural lighting in the detention centers of Karakol city DIA remains unresolved, the windows in the cells are not glazed, and the light and the air comes through the iron bars with a dense metal mesh on the windows.[79]

The Special Rapporteur on Torture, Mr. Juan Mendez noted that conditions in detention centers do not comply with international standards and amounted to inhuman and degrading treatment. In his report, he pointed out that in order to improve the inhuman conditions in the detention center, a coordinated approach and allocation of funds from the state budget is required. In addition, recognizing that many of the observed problems are caused by lack of resources, he at the same time pointed out that it is possible to take a number of important measures that do not depend on the availability of resources, for example, to provide a stronger legal and procedural safeguards and greater use of non-custodial sentence for those accused of minor crimes.

21. The Organization for Security and Cooperation in Europe has set a direction for improving a policy of the State party in respect of a medical examination at the initial stages of detention as a means of preventing ill-treatment and torture. Please provide information about the current

[75] Statistics provided according to the letter of the head of the detention center of Uzgen district DIA Mr. M. Ismailov of June 1, 2011 reference No. 1/2037, addressed to the Deputy Chief of the law and criminal analysis of the MIA of the Kyrgyz Republic police Colonel Mr. Sh. Mamyrov.
[76] The Report, *"Respect for the right to freedom from torture in closed institutions of the Kyrgyz Republic. Monitoring. Response. Rehabilitation", Bishkek, 2012.*
[77]Ibid.
[78]Ibid.
[79]Ibid.

policy of the State party in this regard. For example, whether there is a medical examination of all persons in custody, whether all persons remanded in custody have the right to such an examination, whether health professionals conducting the examination dependent on the authorities of the penitentiary system, and whether they have the required training to detect evidence of abuse?

As noted above,[80] according to the Criminal Procedure Code of the Kyrgyz Republic, each conveyance of a suspect or an accused in the detention center, as well as a complaint received from him, his lawyer, and relatives on the use of physical violence against him by officers of inquiry and investigation, he/she (a suspect or an accused) shall be subject to mandatory medical examination with records.[81]

Monitoring results showed that, in practice, often a medical examination does not meet the requirements of this procedure, it is either conducted formally or is not conducted at all. Special forms (template forms) to write down injuries are not used when conducting medical examinations.

On August 20, 2013 a standard form of medical examination of prisoners, developed in 2012 by members of the Coalition of Human Rights Defenders of the Kyrgyz Republic for the Prevention of Torture was approved by the order of the Chairman of the State Penitentiary Service under the Government. A basis for the development of the standard examination form was the Istanbul Protocol - a guide on medical documentation of torture and ill-treatment, which gives clear guidance in this area.

Obtaining support and authorization of the senior management of State Penitentiary Service will in the near future introduce this form into practice of conducting examinations in all IDFs in the country within the correctional system. Doctors and paramedics of IDFs will have a duty to conduct medical examinations of people arrested for the presence of bodily injuries and mental/psychological trauma and fill in the standard form.

In September 2013 with support of the OSCE Centre in Bishkek and the “Freedom House”, experts of human rights NGOs conducted two trainings at the Study Center of State Penitentiary Service for health care professionals of IDFs on procedure of filling out the standard forms of medical examinations.

Health care professionals of the TDFs are under the structure of Ministry of Interior, health care professional of IDFs and penal colonies are under the State Penitentiary Service under the Government that creates their dependence on management of the institution. For several years, human rights organizations have raised questions about the need for transfer medical service of the Ministry of Internal Affairs and State Penitentiary Service to the Ministry of Health.

22. Please indicate whether there is a legislation providing for expanded access to all places of detention with the right to visit without prior notice of independent observers such as the International Committee of Red Cross and non-governmental organizations? Is there a central authority that authorizes access to the detention centers?

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[80]See above: answer to question 5 (c).

[81]Article 40 of the Criminal Procedure Code of the Kyrgyz Republic.

According to the Criminal Procedure Code of the Kyrgyz Republic following people have a right to attend the closed institutions executing punishment, without special permission: 1) The President of the Kyrgyz Republic, the Prime Minister of the Kyrgyz Republic, deputies and Jogorku Kenesh (Parliament) of the Kyrgyz Republic commission members, heads of state administrations and local self-government within the relevant territory, Attorney General of the Kyrgyz Republic, as well as authorized prosecutors and prosecutors directly overseeing the execution of sentences in the area, and 2) employees of higher authorities of criminal executive institutions (State Penitentiary Service) and 3) judges exercising justice in the territory where the institutions and bodies execute punishment.[82]

Representatives of international and / or non-governmental organizations, media and other persons entitled to attend institutions and bodies exercising punishment by special permission of the higher authorities of the correctional system (State Penitentiary Service) in the manner specified by State Penitentiary Service under the Government.

As noted earlier in this report, there is a memorandum on cooperation in the field of human rights and freedoms since 2011 between the Ombudsman of the Kyrgyz Republic, the OSCE Centre in Bishkek, government[83] and human rights NGOs, aimed at enhancing protection of persons deprived of or restricted freedom from torture and other Cruel, Inhuman or Degrading Treatment or Punishment, through joint visits to places of restriction and deprivation of liberty throughout the country, without prior notice.

23. Please provide statistical information on persons held in pre-trial detention and detained in prison over the period broken down by gender, age, ethnicity and location, for example district / city, as well as with the types of crime and the length of detention. Please indicate whether men, women and children are detained separately during the whole period of detention or prison sentence.

According to information provided by the State Penitentiary Service under the Government in its official response to the request, total number of persons detained in State Penitentiary Service as of 1 January is as follows:

- 2008 - 11408 people;
- 2009 - 9607 people;
- 2010 - 9923 people;
- 2011 - 9698 people;
- 2012 - 9828 people;
- 2013 - 10039 people.

In the same letter State Penitentiary Service under the Government stated that “We cannot provide quantitative data from 1999 to 2007 as the retention period for report is 5 years.” In addition, the

[82] Article 23 of the Criminal Procedure Code of the Kyrgyz Republic
[83] Among government agencies, that have entered into a Memorandum, are: Office of the Ombudsman of the Kyrgyz Republic, the General Prosecutor’s Office of the Kyrgyz Republic, Ministry of Interior, Ministry of Health, Ministry of Justice of the Kyrgyz Republic, State Penitentiary Service under the Government.

data broken down by gender, age, etc. cannot be provided as on the basis of departmental order this information is classified as a secret one."[84]

Article 12

24. Please indicate whether any applicable statute is applied of limitations to actions covered by article 305-1 of the Criminal Code. In general, please, provide information, including detailed statistics on disciplinary procedures and sanctions against law enforcement officers and the terms of limitations of actions applied to them.

The article "torture" in the national legislation is considered to be in the category of grave and very grave crimes, but the statute of limitations of action for criminal responsibility is applied to this type of crime.

In accordance with the Criminal Code of the Kyrgyz Republic a person shall be exempt from criminal liability if the following terms have expired from the date the offense was committed: 1) one year after commission of a minor offense, and 2) three years after commission of a less grave crime, and 3) seven years after commission of a grave crime; 4) ten years after commission of a very grave crime, except in cases when statute of limitations of action can be applied to the person who committed the crime to which a life sentence may be imposed. Persons who have committed crime against peace and security of mankind, in the cases specifically provided for by the law of the Kyrgyz Republic, the terms of limitations of actions do not apply.[85]

25. Reports of independent experts indicated that the activist Mr. Bektemir Akunov died as a result of torture during detention and that two police officers in Naryn were charged with negligence. Please provide the Committee an update on the status of the proceedings. Whether more serious charges were put forward in this case, in particular under Article 305-1 of the Criminal Code? Please also report efforts undertaken by the State party's to conduct investigations in order to confirm the message of independent experts and to identify the responsible persons. Please also provide the Committee with an update on the status of a lawsuit filed by relatives Mr. Akunov against four police officers of Naryn city, and indicate whether the family received compensation and remedies.

Mr. Bektemir Akunov, who participated earlier in the hunger strike on his political motives, was arrested and detained in the cell of the department of internal affairs of Naryn city, where he was found dead shortly. In connection with death of Mr. Akunov, a criminal case was initiated under article 316 part 2 ("negligence") of the Criminal Code of the Kyrgyz Republic against police officers of Naryn city police department Mr. Bakytbek Kozhomberdiev and Mr. Bolot Zhunushbaev.

According to the sentence of Naryn City Court of April 4, 2008 police officer of Naryn city DIA Mr. Bakytbek Kozhomberdiev was found guilty of an offense under Part 2 of Article 316 (negligence) of the Criminal Code, and sentenced to imprisonment for a period of three years.

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[84] Response of the State Penitentiary Service under the Government of the Kyrgyz Republic of July 17, 2013, Reference No. 100/01-B-2.

[85] Article 67 of the Criminal Code of the Kyrgyz Republic.

However, applying Article 63 of the Criminal Code, the punishment was changed to a conditional sentence with a one year probation.

The second suspect in the case Mr. Bolot Zhunushbaev was also prosecuted on charges of committing a crime under Article 316 part 2 of the Criminal Code of the Kyrgyz Republic, but due to the lack of corpus delicti in his actions he was acquitted by the court.

On May 7, 2008 the Court of Appeal upheld the acquittal of Naryn City Court.
On September 2, 2008 Judicial Board for Criminal Cases of the Supreme Court of the Kyrgyz Republic , decided to uphold the decisions of judicial board of Naryn Regional Court of May 7, 2008, the Naryn City Court of April 4, 2008 in respect of Mr. Bolot Zhunushbaev.

Thus, it can be concluded that the criminal case of Mr. Bektemir Akunov was not properly investigated and those people responsible for his death were not punished.

Relatives of Mr. Akunov filed a civil lawsuit to recover compensation for moral damage. On December 2, 2008 Pervomayskiy District Court of Bishkek decided to recover from the state treasury material damage in the amount of 465139 soms (around 10,000 usd) and moral damages in the amount of 100,000 soms (around 2000 usd). However, on March 19, 2009 this amount was significantly reduced by the appellate court, which ruled for the recovery of material damage in the amount of 27967 soms from the state treasury.

Therefore, for the death of Mr. Bektemir Akunov the state offered to pay about $2,000 in compensation for moral damages and $ 570 for material damage. Disagreeing with the size of compensation, relatives of the deceased did not demand the compensation ordered by the court and the compensation was not paid in fact.

26. Information before the Committee contains allegations of torture and rape of Ms. Zulhumor Tohtonazarova during her temporary custody, as well as her pregnancy as a result of the rape, which ended for her premature birth in handcuffs when she was held chained to the bed and in front of male officers. The Committee is also concerned at reports of harassment and persecution of Mr. Azimjan Askarov activist who defended Ms. Tohtonazarova. Please indicate what measures have been taken in accordance with the State party's obligations under Article 12 to investigate these allegations? At what stage are the proceedings at the moment and whether any reparations have been considered appropriate and whether they were granted any reparations?

The Kyrgyz Republic has failed to meet its obligations in accordance with Article 12 of the Convention against Torture in part of a prompt and impartial investigation by the competent authorities, wherever there is a reasonable ground to believe that torture has been committed in any territory under its jurisdiction.

Under national law, investigation begins only after the criminal case was initiated. In order to initiate the criminal case grounds for that are needed. . The grounds for criminal prosecution are always checked, as required by Article 156 of the Criminal Procedure Code. Checks are not yet investigations. The prosecutor's office did not investigate all the statements attached to the complaint. Decision to dismiss a criminal case issued by the prosecutor's office openly demonstrates

a lack of thoroughness and effectiveness of pre-investigation. In case there is a torture complaint, it is necessary to conduct an investigation, not checks. The difference is significant in the sense that during the investigation, people being interrogated are warned about criminal prosecution for perjury, and during the checks people being interrogated are not responsible for the testimony given by them. In this regard, there is every reason to believe that the investigation carried out by the prosecution is not effective and, therefore, the decision to refuse is unreasonable and unlawful.

In connection with the above mentioned information it can be concluded that requirements of Article 12 of the Convention against Torture are not fulfilled. In practice, this is as follows: an investigator interrogates persons whom the torture victim files a complaint against, a person being interrogated denies this fact, and the investigator makes a decision not to institute criminal proceedings. Practice shows that the torture victim in this case may not even be interviewed.

The case against the police officers, who used torture against Ms. Zulhumor Tohtonazarova, was dropped for lack of evidence. Currently, a victim refuses to support her charges against police officers, and, due to the fact that there had been no proper investigation and the guilty people were not punished, no claim was filed for a compensation of moral and material damages.

However, the investigator Mr. Maksat Zhamankulov filed a lawsuit to the court against a human rights defender Mr. Azimjan Askarov[86], who made the details of this case public in the media. In the district court Mr. Askarov challenged the court and the case was transferred to the neighboring court in Nooken district. Due to the fact that the Nooken district court judges were interested in biased consideration of the case, Mr. Askarov challenged the entire judicial system of Jalalalabat Region.

His lawyer appealed to the court with a motion "to transfer this case to the Supreme Court and further transfer it to the court of another region". Despite the fact that the challenge of all judges by human rights activist was adopted, the presiding judge of Nooken district court did not transfer the case to a higher court, but took it into production and dismissed the case on the basis that the plaintiff's failure to appear to court hearings twice.

The court decision to terminate the proceedings was challenged by the police officer in a higher court and the case was remitted back to Nooken District Court. Despite the fact that the accused Mr. Askarov was absent in court, the trial was held and by the decision of the court the human rights activist Mr. Askarov was acquitted.

27. Information available to the Committee includes reports that in January 2007 an employee of the Office of Internal Affairs, who questioned the pregnant woman, that witnessed theft, subjected her to beatings, threatened her and called her a prostitute, after which she was hospitalized for 10 days. Although the victims filed a complaint to the prosecutor's office, no actions, apparently, have been taken. Please clarify whether there was an investigation and, if not, why not? In addition, when the network "Spravedlivost" (Justice) reported about the incident the above mentioned officers filed a criminal claim for defamation. Please inform the Committee about the status of a claim about the spread of defamatory information and provide statistical

[86] Human rights activist Mr. Askarov was the author of the newsletter "The right for all" (print agency of regional human rights organization "Spravedlivost" (Justice), where he regularly published articles criticizing the work of law enforcement and the judicial system of Jalalabat region.

data on the number of claims about the spread of defamatory statements that have been filed in connection with allegations of ill-treatment by police officers.

On January 13, 2006 Ms. Nargiza Turdieva was interviewed as a witness by senior investigator of Jalalabat province DIA, Lieutenant Colonel Mr. Ali Mageev. On the next day she was subjected to torture, as a result of which she was hospitalized with a diagnosis of "threat of miscarriage".

On February 1, 2006 district prosecutor ordered not to institute criminal proceedings against the police officer Mr. Mageev.

In March 2006, Mr. Ali Mageev filed a claim against the officers of the regional human rights organization "Spravedlivost" (Justice) Ms. Valentina Gritsenko, Mr. Muhamadzhan Abdujaparov, Mr. Abdumalik Sharipov and asked to recover one million soms from them (about $ 25,000) for the fact that the organization had published an article "Women are beaten, even pregnant" in the newsletter "Rights for all". The article claimed that Mr. Ali Mageev beat and abused pregnant Ms. Nargiza Turdieva.

In addition, Mr. Mageev filed another petition in which he asked the court to initiate criminal proceedings against human rights defenders under articles 127 ("libel") and 128 ("insult") of the Criminal Code of the Kyrgyz Republic, as well as to recover about 157,000 soms (over 3,900 usd) from the defendants as compensation for moral damages that he has suffered as a result of the publication of the aforementioned article.

The investigator also asked to prosecute Ms. Nargiza Turdieva and Mr. Ulugbek Ibragimov who told human rights defenders about the fact of torture.

The trial against human rights defenders of "Spravedlivost" (Justice) lasted for about one year and a half, and ended due to personal request of Mr. Ali Mageev.

Article 13

28. In its concluding observations, the Committee also expressed concern at the insufficient guarantee of the independence of the judiciary system, in particular regarding the extension of term appointments made by the President. In this context, the Committee notes that in July 2000, the Human Rights Committee also expressed concern about the lack of full independence of the judiciary system, noting in particular that the current procedure of certification of judges, the requirement once every seven years to undergo a special assessment procedure by the judges, the low level of salaries and the uncertain tenure of judges may encourage corruption and bribery. The lack of complete independence of the judiciary system has also been recognized by the Special Rapporteur on the independence of judges and lawyers following his visit to the state party in 2005. Please indicate what steps have been taken to implement the specific recommendations made for improvement in this area.

The following changes were made in the country's judicial system after the adoption of the new Constitution of the Kyrgyz Republic on June 27, 2010:

A new mechanism of judicial self-government was introduced - the Council on selection of judges whose competence is similar to the competence of previous authority of judicial system - the National Council of Justice;
President no longer has the right to consent to the prosecution or exercising of administrative procedures in respect of judges of local courts, so now the Judicial Council has this authority;
The term of power of judges working in the office conducting the constitutional control was shortened (up to 2010 - Constitutional Court of the Kyrgyz Republic, after 2010 - Constitutional Chamber of the Supreme Court.) In the new edition of the Constitution of the Kyrgyz Republic a provision establishing the terms of office of judges of the Constitutional Chamber of the Supreme Court is not provided, despite the fact that previous editions of the Constitution had it. Now this provision is contained in a separate law. Previously, the Constitutional Court judges were elected until they were reaching a certain age limit,[87] now a judge of the Constitutional Chamber of the Supreme Court shall be elected for the first time for a period of 7 years, and later - until he/she reaches the age limit established by the Constitution - 70 years.

In accordance with the current version of the Constitution the Parliament is entitled to remove judges from office by two-thirds majority.[88] The usage of this procedure may be due to politically motivated decisions. The above system in the long term could undermine the authority of the judiciary system.

Amendments to the procedure for selection of judges are currently being initiated, where there is a risk of strengthening the role of the President of the Kyrgyz Republic. This is reflected in the abolition of the third main round of selection of judges. From the official request it was learned that since the beginning of the Council's work on the selection of judges as of April 1, 2013, out of 564 candidates 5 candidates or 0.88% were not selected in the first two rounds. In other words, 99.12 % of the candidates get to the third round. And if the Council of selection of judges will not improve the effectiveness of the first two rounds, the primary part of the candidates will be selected by the President.

29. Please indicate what specific measures have been taken to strengthen the system of considering complaints in order to provide an effective, reliable and independent system to conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment by the police, members of the State Committee for National security or other officials, as well as, where appropriate, to prosecute and punish the perpetrators, thus ensuring in practice, as suggested by the Committee in its previous concluding observations, that the perpetrators of torture or ill-treatment related actions do not remain unpunished.

Despite legal requirement to consider allegations of torture as statements about the crime, in practice, such claims are often seen as mere complaints against law enforcement bodies, and, therefore, criminal cases are not instituted, and the complaints are either ignored or, at best, subject to internal checks. These checks are usually limited to obtaining explanations from the police, who deny the use of torture, after which the prosecutor makes a decision not to institute criminal proceedings. All the necessary investigative actions are not carried out, in particular: examination

[87] The Constitution of the Kyrgyz Republic of May 5, 1993. Article 83 claim 5
[88] The Constitution of the Kyrgyz Republic of June 27, 2010, Article 95

rooms which could detect traces of weapons or torture; interviewing witnesses and the victims; medical inspection and examination. This indicates that from the beginning the prosecutors are not interested in establishing the truth and focus on something that could serve them in the future as a basis to refuse in initiating a criminal case. Internal checks are usually confidential. The applicant is not informed of the checks, he/she does not have an access to the materials of checks, he/she does not have an opportunity to present evidence, and all the procedural rights that are owned by the victim in the criminal case are not in place. The investigation into allegations of torture is often one-sided and superficial.

This practice of complaint consideration contradicts international standards of considering the allegations of torture, according to which the State must guarantee the person an effective access to the authority receiving the complaint and to the procedure of filing complaints. Complainants should be provided by certain rights, including: the right to be informed and to have access to any hearing, the right to all information relevant to the investigation, and the right to present other evidences[89]
.
According to a report prepared by Human Rights Watch, "despite presence of multiple number of complains, and in some cases with sufficient evidence, Kyrgyz authorities failed to comply with its international obligations under the prompt and thorough investigation and prosecution of cases of torture related to June violence".[90]

One of the main causes of the mass ignoring of torture complaints is an absence in the national legislation and failure to implement in practice a principle of "transfer the burden of proof" on the allegations of torture, which is an important guarantee mechanism to prevent torture and ill-treatment.

In those rare cases where criminal proceedings are instituted on allegations of torture, the investigation is greatly delayed and does not meet standards of prompt, thorough and effective investigation. Appeals against decisions of the prosecutor's office in most cases lead to a resumption, and then to the secondary termination of the criminal case. The repetition of legal procedure of initiating and terminating criminal case at the request of a victim can last many times, without a real investigation of the case, and is often superficial, often unable to identify the perpetrators of those crimes.[91]

Unwillingness to accept complaints and allegations of torture is directly related to doubts among law enforcement officers that the crime will be solved. This is due to the fact that the main indicator of effectiveness of these bodies' work is the so-called resolved cases, in other words the ratio of the number of crimes solved by the total number of allegations of crimes. Employees of operational services focused not so much on the actual crime-solving, but on how to increase its percentage. However, following factors are obstacles for a real increase of resolved cases due to a number of objective and subjective reasons: the low professional level of employees, an inability to use

[89] Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the annex to General Assembly resolution number 55/89 of December 4, 2000.
[90] "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch, 2010, p. 27.
[91] See Annex No. 5 to question No. 29 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

operatively-search activity means provided by the law, etc. As a result, main evidence of involvement in the crime is confession of the suspect, and the principal means of obtaining it - the use of torture.

30. According to information before the Committee, a number of NGOs and independent lawyer who report acts of torture or ill -treatment, were pressured or harassed by the authorities, especially at the regional level, and a number of NGOs have been prosecuted on charges by law enforcement authorities for defamation and subsequently subjected to heavy fines. At the end of his visit to the state party in 2001, the Special Representative of the Secretary-General on human rights defenders noted that the right to protest against human rights violations is suppressed. Please comment on this observation and provide relevant statistics on the number of court cases against lawyers and human rights (including NGOs) on charges of defamation, and the results thereof.

On December 21, 2010 the Ministry of Internal Affairs had filed a claim in respect of the director of the Human Rights Center “Kylym Shamy” Ms. Aziza Abdirasulova to protect the business reputation and recovery of non-material damage shortly after the publication of her interview on the website “Deutsche Welle”, where Ms. Aziza Abdirasulova talked about the use of firearms during the “June” events in 2010 in the country. The publication stated that the law enforcement officers began to use firearms first, not civilians of Uzbek or Kyrgyz nationality.

Ministry of Interior Affairs accused Ms. Aziza Abdirasulova in the presentation of information that is untrue, defaming the honor and dignity of every police officer, as well as business reputation of Osh city DIA. Doubts about the veracity of facts told by Ms. Aziza Abdirasulova on the lack of criminal prosecutions by the General Prosecutor's Office, the National Security Committee of the Kyrgyz Republic and the Ministry of Internal Affairs on the illegal use of firearms by law-enforcement bodies in the period were also used as the basis.

In its statement of claim the Interior Ministry asked the court to oblige Ms. Abdirasulova to refute the information discrediting the honor and dignity of every employee and recover monetary compensation for moral damage in the amount of one million soms in favor of the Ministry of Internal Affairs.

During the trial of the case on February 14, 2011 at the Pervomayskiy District Court of Bishkek, the Interior Ministry has withdrawn its claim.

Also civil society is aware of non-compliance of the State with its positive obligations in respect of law and order in the judiciary system, and the lack of interest in bringing the perpetrators to justice. As it’s known on April 2, 2013 in the Supreme Court of the Kyrgyz Republic there was an incident of beating of lawyers Ms. Tatiana Tomina and Mr. Ulugbek Usmanov, representing the interests of the accused citizen of the Russian Federation Mr. Shamshidin Niyazaliev in the case “SANPA”. It should be noted that the safety of the participants of the trial was not provided by the courthouse: the court did not suppress repeated threats and provocation of representatives of the injured party; the persons responsible for beating of lawyers were not anyhow punished.

A review of the statements of lawyers Ms. Tatiana Tomina and Mr. Ulugbek Usmanov Pervomayskiy district DIA of Bishkek city made a decision not to institute criminal proceedings.

Originally statement about the inaction of judges was sent to the General Prosecutor's Office of the Kyrgyz Republic, whose staff refused to accept a written statement, referring to the fact that the incident was related to hooliganism and therefore claimant needed to contact the police instead. Arguments that the police are incompetent to deal with issues of inaction of the judiciary system were ignored by the General Prosecutor's Office. The complaint of the inaction of the judiciary system was sent by registered post with confirmation. The General Prosecutor's Office has not taken any action on the complaint.

Article 14

***31.* Please provide updated information on measures taken by the State party in respect of compensation and rehabilitation of victims of torture, and the relevant statistical data.**

One of the main reasons for widespread use of torture in the Kyrgyz Republic is the impunity of the perpetrators of the crime. During his visit, the Special Rapporteur on Torture, Mr. Juan Mendez said that torture goes unpunished, and little efforts are put for their investigation that increases the number of cases of torture.

Since the criminalization of torture in 2003 in the country there was not any conviction on this article, despite the large and systematic receipt of allegations of torture.[92] In practice, many allegations of torture are left without proper consideration, only a very small number of cases get a criminal prosecution. Only in 5 cases there was a criminal proceeding out of 94 allegations of torture for 4 months in 2011 according to the internal security services. According to the data of the Supreme Court, for the whole period of criminalization of torture, in other words since 2003, courts have considered only three cases brought under Article 305-1 ("torture") of the Criminal Code of the Kyrgyz Republic. However, in all cases, the court acquitted the accused for lack of evidence that they committed the crime.

Lack of the court practice analysis of torture cases and clarifications of the Plenum of the Supreme Court of the Kyrgyz Republic is one of the reasons of inefficiency of considering by courts criminal cases involving torture and to determine the amount of compensation for material / moral damages to victims of torture.

In accordance with the criminal procedure legislation, a victim has a right to demand from a convicted person compensation of moral damages caused by the crime,[93] that is, as noted in a joint submission to the DHR[94], prepared by the Office of the UN High Commissioner for Human Rights and a group of leading human rights NGOs advocating against Torture, "Kyrgyz law does not allow torture victims to receive compensation in a civil case as long as the torturer will not be found guilty

[92] Response of the Judicial department under the Supreme Court of the KR to an inquiry of PF "Golos Svobody" as of 18 February 2013, #15-13.
[93] Article 22, clause 1 of the Criminal Procedure Code of the Kyrgyz Republic
[94] Summary report prepared by the Office of the UN High Commissioner for Human Rights in accordance with claim 15 (c) of the annex to resolution number 5/1 of the Human Rights, UN Doc. A/HRC/WG.6/8/KGZ/3, paragraph 28.

in a criminal case [... and] after the criminalization of torture in 2003, no victim of torture has received monetary compensation".[95]
It's important to note that Rehabilitation Program for torture victims at the Public Foundation "Golos Svobody" is an only one in the Kyrgyz Republic. For the time of work (2007-2013) Rehabilitation program provided to approximately 400 torture victims a number of needed services such as medical treatment (ambulant/hospitalization therapy), medical examination, medicamentous therapy, psychological/ psychotherapeutic consultations, social aid. During functioning of the Rehabilitation Program there were many cases when victims that went through a complete course of medical and psychological rehabilitation, were retraumatized again because their torture cases were not successful. After that a new plan of treatment had to be developed and recurring psychotherapy had to be conducted. Psychotherapy can last as long as 2-3 years.

Article 15

33. There is a request to enumerate fully the provisions of the internal legislation of amember State which in no circumstances allow deviations from absolute prohibition of tortures, prohibit usage of any application received under torture and establish that an order of a senior chief cannot be an excuse of torture.

According to the National legislation evidence obtained with violation of the requirements of the Criminal Procedure Code is inadmissible and cannot be taken as the basis of the judgment in a case.

The Criminal Procedure Code of the Kyrgyz Republic lists three types of evidence that are inadmissible: 1) evidence of an alleged criminal or an accused person given in absence of a defense council; 2) evidence of a witness based on guesses and conjectures; 3) other evidence received with violation of the requirements of a criminal procedure.[96].

Criminal Procedure Code of the KR contains general prohibition for the use of threats, violence, other abusive or human dignity humiliating treatment when carrying out investigatory actions but does not contain any concrete norm about exclusion of evidence received as a consequence of torture use, that does not fully conform with the International Obligations in relation to obvious prohibition of using such evidence. In spite of absence of such clearly formulated norm, in principle, it is believed that evidence received with torture use is violation of the KR Criminal Procedure Code requirements, and correspondingly should be recognized as inadmissible.

However, in practice courts often ignore this requirement. In spite of the legislation requirement that the accused person evidence cannot be the ground for judgment of conviction often law enforcement authorities first of all try to get particularly confessionary evidence. Courts encourage the given practice placing unreasonably great importance on confession of the accused when assessing the evidence.

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[95] See Annex No. 5 (a) to question No. 31 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
[96]Criminal Procedure Code of the KR. Art. 81.

If the accused who is the victim of torture in the course of a court session makes a statement about tortures use then the court considers such statement as an attempt to escape from the responsibility for the committed crime[97].

According to the data of the two-year project of the OSCE ODIHR on monitoring of court proceedings carried out in 2005-2006 practice of exclusion of evidence that as it is stated was received with torture use does not correspond to International Obligations and requirements of the National legislation about general prohibition for use of evidence received by unlawful methods[98]. In the course of monitoring it was determined that in 11,5 % of court hearings the accused declared that in order to receive confessionary evidence torture and other types of inadmissible treatment were used to them. In more than half of the cases (60,2%) judges did not carry out investigations on complaints about torture and did not take any measures. In the remaining cases (39,8 %) judges called the crime investigators with summons for them to give evidence as witnesses and as a rule accepted their evidence that the accused was not subject to torture in the course of introductory investigation before the trial. The judges' actions in such cases were formal in their character and according to the monitoring results no thorough measures for the accused applications verification were taken.

So, according to the data of the carried out monitoring noneof 133 torture complaints led to exclusion of evidence.

Article 16

34. There is a request to submit an updated statistical information about persons deprived of freedom and kept in both civilian and military institutions for the purpose of social deprivation, correction, psychiatric treatment, specialized upbringing etc. and to provide data split in particular according to the type of institution, age, gender and ethnic origin.

Statistical information about persons deprived of freedom and that are kept in correctional institutions of the Kyrgyz Republic is presented below[99].

According to the response of the Main Headquarters of the Armed Forces of the KR dated July 12, 2013 to the request to submit information about persons deprived of freedom in military institutions, in a detached disciplinary troop of Military Unit # 31444 there is one serviceman of involuntary service a soldier Artykov I.P. who, according to the Military Tribunal of Bishkek Garrison was convicted of a crime commission under Article 359 part 1 ("unauthorized abandonment of the military unit or a place of service by a serviceman of involuntary service and equally failure to appear within a term without reasonable excuse to the service when going on leave from the military unit, at appointment, at transfer, from a business trip, from leave or a health institution lasting more

[97]See Enclosure 6 to Issue 33 of the list of issues prepared before submission of the second periodical report of Kyrgyzstan (CAT/C/KGZ/2).
[98]Report "Resultsofmonitoringofcourt proceedings in the Kyrgyz Republic in the years of 2005 – 2006".OfficeforDemocraticInstitutionsandHumanRightsof the OSCE, OSCE Center in Bishkek.P.9. http://www.osce.org/documents/odihr/2007/12/28701_en.pdf.
[99]See: Answer for the question # 23 of the list of questions prepared before submission of the second periodical report of Kyrgyzstan (CAT/C/KGZ/2).

than 3 days but not more than one month”) of the Criminal Code of the KR serving his sentence in the disciplinary military unit for three months.

Apart from this, in conformity with the Decree of the Armed Forces Main Headquarters’ head dated December 20, 2011 # 61 “On elimination of the law violations” it is prohibited to inflict a punishment in the form of arrest of servicemen of all categories with keeping in the detention quarters of the garrison.

In the table provided below the statistical data about the number of persons kept in healthcare facilities for psychiatric, anti-tuberculosis treatment and also for drug treatment is presented; and this data was received in the course of monitoring carried out by the Public Foundation “Psychiatric Health and Society”.

Institute	**Keeping limit**	**In fact on the day of monitoring**	
		Men	**Women**
Ak-SiuWomen’sPsychoneurologicalAsylum House	250	-	220
Belovodsk Children’s PsychoneurologicalAsylum House	250	255	
Jaiyl Women’s Psychoneurologicalasylum house			244
Children’s Psychiatric Hospital of Ivanovka Village	40	24	
Mixed PsychoneurologicalAsylum House of Kadamjai	230	134	84
Issyk-KulRegionalCenterforTuberculosis Control (Karakol City)	24	13	
Kyzyl-KiyaAnti-tuberculosisHospital	20	19	
Naryn Regional Center for Tuberculosis Control (Naryn City)	20	9	4
Osh Regional Drug Rehabilitation Center	50	35	5
OshCenterforPsychologicalHealth	170	116	42 and9 children
RehabilitationChildren’sAsylum House ofPokrovkaVillage		53	
RepublicanCenterofNarcology(Bishkek City)	180	158	
TalasRegionalCenterforTuberculosisControl (Talas City)	20	10	3
PsychoneurologicalAsylumHouseforMenof Tokmok City (Tokmok City)	276	233	

35. According to the information that the Committee possesses, incarceration conditions in prisons and other places remain extremely unsatisfactory. In its previous conclusions and recommendations the Committee asked the Member State to improve the incarceration conditions in prisons taking into account the Standard Minimum Rules for the Treatment of Prisoners of 1955. In this context it points out that in considering of the initial report of the Member-State on the International Covenant on Civil and Political Rights in July 2000 the Human Rights

Committee expressed disquietude, among other things, with inhuman incarceration conditions in prisons that are characterized by overcrowding of wards and inadequate nutrition and medical service. There is a request to submit information about the measures taken for these problems solving.

A) Separation of various categories of the prisoners

Notwithstanding that different categories of prisoners should be kept in separate locations or different parts of one and the same location taking into account their gender, age, former criminal conviction, juridical reason of their imprisonment and prescribed specified treatment of them, the observers of the Public Supervisory Board (PSB)[100] under the State Service for Execution of Punishment under the KR Government in the course of monitoring of the country detention units and correctional facilities in 2012 elicited several facts of non-observance of the legislation provisions. For instance, Administration of the Detention Unit # 25 of Osh city during reception and accommodation of the newly arrived prisoners houses them in Ward # 24 without separation re categories[101].

In Penal Colony # 10 of Jalalabatabat city the observers also pointed out that together with the newly arrived convicts in quarantine there were persons who had already been serving their sentences. A serious problem is conflicts among the persons taken into custody. Practice shows that in criminal subculture there is a strict splitting-off of the taken into custody in the informal categories of "smotryaschije" – "monitoring bosses" – (monitoring criminal bosses with no obligation to work in the colony but with many privileges), "mujiki" – "men" – (a general name of the biggest group in the informal prison hierarchy. They differ from "smotryaschije" because they work, occupying no responsible positions, in accordance with the colony's informal hierarchy, they do not collaborate with administration, they seek no power; they are not servant to anyone. They do not interfere in the "smotryaschije" affairs. Opinions of authoritative "men" are valued by all the other groups of prisoners) and the "otverjennye" - "outcasts" –(the lowest caste in the prison hierarchy, the caste of the "untouchable". One can take nothing from the "outcasts", touch them, sit on their beds, etc. The "outcasts" have separate places in barracks, in a canteen; they use marked dishes and utensils. They do the dirtiest work which other prisoners should not do; they are often victims of rape or sodomy). Monitoring revealed the fact that persons from the category of "outcasts" are in the worst situation. Other prisoners avoid any contacts with them. They have to live and eat separately, do the dirtiest work in the facility. The "outcasts" live in separate accommodations that do not fit for living, where not only standards of dwelling space are not observed but even light, ventilation are not available[102].

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[100] Public Supervisory Boards (PSB) were created in 2010 by the KR President Decree of September 29, 2010 УП #212. Currently effective "Provision about a Public Supervisory Board under a State Authority" is recited as revised in the KR President Decree of March 5, 2011 УП # 56.
In accordance with the Provision a PSB is a consultative-supervisory body formed for the purpose of ensuring the citizens' participation in realization of the public control over the activities of the Executive Agency under which it is created, adjusting effective interaction of the mentioned agencies with the public, considering public opinion at the State policy forming and realization. A PSB is formed on the basis of voluntary participation of the citizens and representatives of organizations of the civil society of the Kyrgyz Republic and is a permanent body realizing its activity on a pro-bono basis. At present PSB is formed and operates in 41 State Agencies of the Republic. www.gov.kg.

[101] Report "Situation with the human rights in detention facilities and correctional facilities of the SSEP under the Government of the Kyrgyz Republic" within the framework of activity of PSB under the SSEP. Bishkek, 2012.

[102] Ibid.

According to the National legislation the size of the dwelling space per one convict in penal colonies should not be less than 2 square meters, in prisons – 2,5 square meters. If an ordinary convict in this colony is allocated 2,5 square meters of the dwelling space then the "outcasts" live in dugouts or territories of the deserted industrial zones[103].

The research disclosed positive changes in incarceration conditions of the "outcasts" category in the juvenile correctional facility for minors in the village of Voznesenovka. After the tragic events of July 18, 2009 when due to a fight among the foster-children the 17 year-old convict Zaitov S[104] deceased; and following this the administration of the facility was changed; the situation in the juvenile correctional facility got better.

The facility personnel are not allowed to name this category of convicts as "outcasts" and at present these foster-children are called the "third detachment". The incarceration conditions are brought closer to the Minimum Standards. For the moment of visit it was warm and there was enough light in the accommodations; there were carpets on the floors. Each foster-child had bed clothes[105].

In the course of monitoring it was pointed out that the changes for better also touched persons convicted for deprivation of freedom for life (hereinafter – DFL). In the Penal Colony # 3 of Novo-Pokrovka Village a separate local area was built for DFL referred to the category of the "outcasts". The conditions were approximated to the minimum standards of detention. Keeping the named persons separately protects them from pressure and encroachment from other DFLs[106].

B) Nutrition

Persons deprived of freedom noted improvement of the quality of the provided food and human diet in comparison with previousyears. In every facility bread is given in the proper quantity. It is not prohibited to purchase, receive the food products from relatives, except the list of the products banned for parcel[107].

The monitoring revealed that in all the correctional and detention facilities there are functioning electrical/steam boilers for hot food cooking, refrigerators for meat storage; warehouse rooms for cereals and flour storage are available. However, food units of all the facilities need repair works to be carried out.

C) Access to medical treatment

With the support of such International Donor Organizations as "Soros Foundation – Kyrgyzstan", Central Asian Regional Program for HIV/AIDS "CARHAP", "DOMKA – KADAP", AIDS Foundation West-East (AFEW), Global Foundation for AIDS, Tuberculosis and Malaria Control,

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[103] Ibid.

[104] "There is nobody to 'crown'", article published on 21 June 2009 by Yuriy Gruzdov, article available at http://www.msn.kg/ru/news/28613/.

[105] Report "Situation with the human rights in detention facilities and correctional facilities of the SSEP under the Government of the Kyrgyz Republic" within the framework of activity of PSB under the SSEP. Bishkek, 2012

[106] Ibid.

[107] Ibid.

International Humanitarian Organization "Doctors Without Borders", International Committee of the Red Cross, OSCE Center in Bishkek and others the following programs are implemented:

- Minnesota Program for Rehabilitation of persons who stopped using drugs.
  In 8 facilities "Rehabilitation Centers Atlantis" were opened. A unique center for the convicts rehabilitation and social adaption is opened n Penal Colony # 31;
- Program of syringes exchange, in 11 correctional facilities stations for syringes exchange were opened.
- Program of methadone substitution therapy.
  In two facilities – Penal Colony # 47 and Detention Facility # 5 – this program is introduced.
- Program of preparation of the convicts for discharge and social adaptation.
  In 12 facilities of the country Offices of Social Support were opened.

A new study base of professional training and retraining of personnel of the penal system facilities was created. Anti-tuberculosis hospitals of Penal Colonies # 27 and # 31 were repaired and equipped in accordance with the International Standards where treatment is carried out according to programs of tuberculosis treatment DOTS and DOTS+.

All the operating projects and programs institutionalized through resolutions of the KR Government, decrees and provisions approved by the Ministry of Justice of the KR and the SSEP under the KR Government[108].

In the Central Hospital of Penal Colony # 47 a proper sanitary condition is maintained, control over observance of regime of treatment with chloride lime and heat treatment is carried out. In all the departments face-lift was made.

Along with positive changes, there are considerable shortcomings in incarceration conditions for TBC convicts in the facilityExisting problems related to lack of heating in the hospital have negative impact on patients' condition. Substandard electrical appliances installed in the treatment room in combination with absence of fire-fighting equipment infringe fire-safety rules[109].
The outdated medical and laboratory equipment still functions in the facility.
For the last years in the hospital there is an increase of a number of diagnosed patients with bad case of diseases: cancer of various aetiology (in 2007 and 2008 –one case each a year, in 2009 – 5 cases), hepatic cirrhosis (in 2007 – 5 cases, in 2008 – 2, in 2009 – 6), HIV/AIDS (in 2007 and 2008 – 0, in 2009 – 3).

Sharp increase of a number of persons with disability was noted. In 2007 18 patients were reported at the Medical-Labor Expert Commission (MLEC)[110], in 2008 – 25 patients, in 2009 – 56 patients. There is also a particular increase in a number of persons who got the 1st Disability Group status (in 2007 – 12, in 2008 – 12, in 2009 – 27).

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[108] Project of the National Strategy of the correctional (penitentiary) system of the Kyrgyz Republic development public hearings for the period from 2011 up to 2015.«Umut-2».December 16-17, 2010, Ak-KemeHotel.Bishkek, Kyrgyzstan.
[109] *AnalyticalinformationabouttheresultsofmonitoringofthelegislationimplementationinColony# 47 of the Department of Sentence Execution of the SSES under the Government of the KR dated 16.02.2010 (Parliamentary Control).*
[110] Medical-Labor Expert Commission(MLEC) is a medical commission that establishes existence, reasons and level of disability, permanent or temporary loss of working ability or its considerable decrease because of a disease, anatomic defect etc.

The observers also pointed out problems of the medical staff incompleteness due to the specific character of work, heavy-duty service and low salaries especially for paramedical personnel, insufficient financing from the budget for buying medical instrumentation, equipment and training (specialization obtaining), difficulties in getting consultations from narrow specialists (on a paid basis).

36. In this context there is a request to submit information including detailed statistical data about measures taken for solving of the problem of lack of proper preventive strategy and medical assistance for persons contaminated with tuberculosis, HIV/AIDS and syphilis in prisons and other confinement facilities. Thereis a request to inform about the measures taken for realization of control and improvement of state after the visits to several prisons and places of pretrial imprisonment that were taken by the Ombudsman in 2003. There is a request to explain whether the Ombudsman carried out such visits in the future. There is a request to inform in detail about the existing guarantees against abusive treatment and tortures of the detained persons in particular in relation to access to an independent doctor and guarantees of confidentiality of medical consultations.

Clients of the Opioid Substitution Therapy (OST)[111] program (with methadone) are subject to persecution by law-enforcement officers. All the questioned clients state that the Police officers watching them near methadone issuing points, unlawfully without reasons arrest them and use force and threats, demand the clients write statements against a third person (drug addict) accusing him/her in crime committing. As a result the clients miss the time of methadone taking, and are late for work.

Ministry of Internal Affairs officers' actions that hamper secure substitution therapy taking decrease the efforts of NGOs that are directed to re-adaption of the clients in the society and growth of programs of methadone substitution therapy attractiveness. .
In cases of detention by law enforcement officers the clients are not given a chance to call a lawyer, to apply to a human rights organization, to inform the relatives about the arrest.

At present in the correctional system facilities of the country the program of methadone substitution therapy operates only in IDFs # 25 and # 21 and in the Penal Colony # 47. Whereof the conclusion comes that the female convicts have no chance to get methadone in the places of confinement and they are in more vulnerable position comparing to men who use injection drugs. Repeatedly the issue of discrimination of women convicts who received methadone out of the prisons was raised, but the SSEP still leaves the issue open.

In IDFs initially there were separate cells for OST clients, however, at present this subdivision does not exist. The clients stay in prison dorms where the organized crime representatives press them to refuse methadone taking.

[111]Opioid Substitution Therapy (OST)is a system of medical assistance rendered to patients with opioid dependency by way of prescribing of constant daily dosage for continuous use under a doctor's control of medical preparations of opioid group. At present for the substitution therapy in the Kyrgyz Republic methadone is used.

Currenly the SSEP is guided by the program “Tuberculosis-4” for the years of 2013 – 2016, approved by the KR Government Resolution as of June 10, 2013 # 325 and also by the National DOTS Program[112].

For the purpose of well-timed detection of TB patients in the correctional system facilities large-scale photo fluorography examination of the convicts is carried out every year (mobile photofluorography machine is available).

Before the year of 2006 photofluorography examination was not carried out systematically which resulted in sharp growth of TBC patients. In the course of monitoring of the Juvenile Correctional Facility for minors (Facility # 14) in 2005 it was found out that the latest examination of foster children was carried out two years before. For the funding allocated by human rights organizations all the persons kept in this facility had photofluorography examination. According to the results of this examination 7 patients were detected with TBC active form[113]. Currently examination of inmates for the purpose of detection TBC patients in this facility is carried out on a regular basis, the patients are rendered an appropriate medical care.

In 2012 in the correctional system facilities located in the Chui Oblast of the country 4577 persons of 4686 prisoners were examined. 71 prisoners with TBC active form were detected according to the results of this examination. These people were forwarded to anti-tuberculosis hospitals for treatment. . In the facilities located in the Southern region of the country prisoners’ examination was conducted on the basis of portable photofluorography unit of the Osh Regional Center for TBC control. 576 prisoners were subject to examination, active TBC form was detected with 22 of them.

Persons delivered to pretrial detention facilities (IDFs) go through medical examination including photofluorography examination within three days. International organizations render humanitarian assistance in carrying out medical examinations. Thus, in 2012 in the IDF # 21 of Bishkek city the newest digital equipment was installed with the help of the International Organization “Doctors Without Borders”

All the detected TBC patients receive treatment in Facilities ## 2, 3, 10, 21, 24, 25, 31 and 27. In order to improve the quality of TBC treatment, rendering of activities on infectious control and further stabilization of epidemiological situation of TBC in the correctional system joining, all anti-tuberculosis treatment facilities (## 3, 27 and 31) are planned to be merged into a single one on the basis of Facility # 31.

For the purpose of prevention and early detection of syphilis in laboratories of the Dermatovenerologic Dispensary of the KR Ministry of Health for the year of 2012 5924 prisoners were examined. In the laboratory for AIDS diagnosis of the Ministry of Internal Affairs of the KR and the Ministry of Health of the KR 7745 examinations were carried out for the purpose of detection of HIV infection.

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[112]Official reply for the request of the SSES under the KR Government fated July 17, 2013, Outgoing #100/01-B-2/.
[113]Report“Human rights in the Juvenile Correctional Facility for Under-age (Facility # 14) on theresultsofmonitoringofNon-governmentalFoundation“Independent Group for Rights Protection” and Public Association “Youth Group for Rights Protection”.Bishkek, 2005.

In the correctional system there are problems related to rendering medical assistance by independent doctors and specialists because of the fact that permission for visits should be obtained from the Central Administrative Offices of the SSEP[114].

38. The Committee has noted that the Human Rights Committee has expressed concern about the detention of persons on mental health grounds and the apparent lack of possibility of challenging such detention (CCPR/CO/69/KGZ, para.10).. It recommended that those detained on mental health grounds should have prompt access to judicial review. Please indicate the steps taken in this connection.

See appendix #8 to issue #38 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).

39. The Committee has noted that in November 2008, the Committee on the Elimination of Discrimination against Women expressed concern that, despite existing legislation and other efforts, domestic violence remains widespread in the State party; it was also concerned that the police approach to such violence is ineffective and that police officers frequently qualify such incidents as constituting mere hooliganism (CEDAW/C/KGZ/CO3, para. 19). Violence against women and the increasing phenomenon of trafficking in women were also a factor of concern for the Human Rights Committee, when examining the State party's report, in July 2000 (CCPR/CO/69/KGZ, para. 14). Please indicate the concrete measures taken to combat and punish violence against women and children, as well as trafficking in women, including relevant statistical information. In particular, please inform whether specific training on violence against women is being provided. Please explain whether any special units, including with female officers, exist within the police to deal specifically with complaints on violence against women.

According to data from the Sezim Crisis Center, since 2000 approximately 640 women were murdered, more than 2,000 raped, and 3,500 were beaten.

According to the Ministry of Internal Affairs in Kyrgyzstan, over the last five years, on average 7,600 people each year call crisis centers for help. In 2008, 7,700 domestic abuse incidents were investigated; while the number of calls made about domestic violence in 2012 was nearly 9,000. However, only 2,580 cases of domestic violence were reported officially by the police in 2012 (in 2008 – 1,150).[115]

It is worth noting that in 2003, the government of Kyrgyzstan adopted a law "On social and legal protection from domestic violence", according to which the accused party is issued a temporary restraining order for 15 days. The offender who has been issued a temporary restraining order is obliged to follow the regulations listed in it, and is penalized according to the law if he does not comply. The victim may also obtain a copy of the temporary restraining order if desired. The

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[114]SeeEnclosure #7 to Question # 36 of the list of questions prepared before submission of the second periodical report of Kyrgyzstan (CAT/C/KGZ/2).

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[115] Interview in an article in Voice of freedom, August 19, 2013: "One on one against the nation's mentality and the deteriorating system," http://vof.kg/?p=11378 (accessed October 9, 2013).

Ministry of Internal Affairs is the responsible agency for enforcement of temporary restraining orders.[116]

In addition, the law stipulates a judicial restraining order, which can be granted from 1 to 6 months. In addition to the requirements of the temporary restraining order, the judicial restraining order "recommends that the offending party leave the residence regardless of who owns the property," as well as "prohibits the offending party to obtain or use firearms or any other kind of weapon."

The penalty for violating the temporary restraining order is either a fine of 500 to 1,000 soms (10-20 USD), or administrative arrest for 5 days. This punishment is only for actions that are not otherwise accounted for in the criminal code of the Kyrgyz Republic.

It is noteworthy to mention that before, the agencies of the Ministry of Internal Affairs were not sufficiently responsive to domestic violence reports and often refused to accept complaints from victims. In 2003, there was not one restraining order issued. However, according to the Sezim Crisis Center, thanks to the efforts of NGOs, the situation has changed over time.
Sezim Crisis Center reports that only 62 restraining orders were issued in 2004, an in 2006 and 2007, there were 13 and 41 restraining orders issued respectively. The practice of issuing restraining orders only changed in three regions of the country – those where women's rights organizations are working actively. It was only five years after the law was passed, and as a result of non-governmental organizations' efforts, that the orders were issued in all regions of the country, and in 2009, over 2,000 had been issued.[117]

Experience shows that punishment in the form of withholding of salary or payment of fines to the government has not been effective, as it puts a strain on the family budget, and can provoke a new family conflict. This often leads the victim to refuse this kind of protection.

The above-mentioned law does not stipulate a minor or legally incapacitated, or partially incapacitated person, or someone who could become incapacitated – or any otherwise helpless person - to be able to report and file for a restraining order; this also includes organizations.

Over the 10 years that the law has been in effect, the government has not taken any measures to organize and open shelters, hospices, and other institutions that are aimed at providing a safe place for victims. Such specialized social service institution should provide legal and counseling services free of charge as is stipulated by the law.

40. The Committee has also noted that in November 2008, the Committee on the Elimination of Discrimination against Women expressed concern about discrimination and harassment against women on the basis of their sexual orientation and about acts of harassment of police officers on sex workers. Please comment on this and indicate what measures have been taken to address this particular problem (CEDAW/C/KGZ/CO/3, para. 43).

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[116] Law of the Kyrgyz Republic On social- legal protection from domestic violence. Article 23.
[117] Interview in an article in Voice of freedom, August 19, 2013: "One on one against the nation's mentality and the deteriorating system," http://vof.kg/?p=11378 (accessed October 9, 2013).

According to data from the International Organization for Migration, more than 5,000 people fall victim to labor or sexual exploitation on a yearly basis, and the Kyrgyz law enforcement agencies report that every sixth girl or woman that leaves the country falls victim to slavery.

While organizing or maintaining any establishment that deals in prostitution is punishable according to the Criminal Code of the Kyrgyz Republic, this law is misinterpreted to also mean a legal prohibition on sex work. Unfortunately, this gives the basis for agencies under the Ministry of Internal Affairs to conduct raids under various pretexts and this allows for abusive practices.

Monitoring the situation from the time that prostitution was decriminalized, the results show that this progressive step has not brought about a reduction of cases of abuse towards sex workers. Currently, sex workers are not openly persecuted for selling sex but instead are detained on other pretexts. More often than not, they are targeted for disruption of public order and the police try to add on some other administrative offense under the Kyrgyz Republic's Administrative Offense Code.

In 2012, a coalition uniting the non-government organization Tais Plus and the social fund Independent Human Rights Group conducted research into the human rights situation of sex workers. The scope of the research included five regions of the country, interviews with 590 sex workers and 33 representatives of the Ministry of Internal Affairs. The work was supported by the Soros FoundationKyrgyzstan.

According to the results of the research, the conclusion was that there were widespread violations of the rights of sex workers, including right to freedom from torture and degrading treatment.[118] 68% of surveyed sex workers say that in the course of their time involved in sex work their rights were violated at least once. Every second instance of violation (50.9%), a GOVD (City Departments of Internal Affairs) or ROVD (District Departments of Internal Affairs) representative was cited as the abuser. In 13.4% of cases of abuse OVD (Department of Internal Affairs (DIA) representatives were cited as perpetrators, and 0.7% cited the police as perpetrators. 0.7% of cases of abuse were attributed to representatives of GUUR (Head Office of Criminal Investigation, Ministry of Internal Affairs).

All representatives reported that they had been subject to extortion, illegal detention, as well as verbal and physical abuse. Interviewees noted the extreme questionability of the DIA agents' detention of sex workers.

The detention of sex workers is carried out in the context of DIA strategy for crime prevention that is sanctioned by an official decree. According to official DIA information, these operations are meant to reduce crime and to find wanted criminals who are in hiding, as well as finding people leading abnormal lifestyles.

Juxtaposing the information gathered from the interviews with the official MIA (Ministry of Internal Affairs) information, we can extrapolate the illegality of the raids in particular carried out in Bishkek by GUVD employees, where sex workers are extorted and abused. According to sex

[118] Research report by the civil society coalition Tais Plus and the social fund the Independent Human Rights Group, "Rights of sex workers in the Kyrgyz Republic," Bishkek, 2012.

workers interviewed in Bishkek, 23.5% said that such raids were conducted on a daily basis, while 44.8% said that they take place multiple times a day.

However, according to MIA official reports, only 13 preventative operations had been carried out in 2011 by GOVD employees in Bishek, within the boundary of the regional MIA office (ROVD). In the first 7 months of 2012, official reports claim that there had been only 14 such operations.

Therefore, all the raids in Bishkek – with the exception of those reported officially by the MIA (13 in 2011 and 14 in the first 7 months of 2012) were carried out unsanctioned, leaving strong evidence that they were illegal, and those carrying them out were abusing their power or overstepping their official authority.

Information gathered from the interviews points to the conclusion that this problem is not only limited to the capital but exists in all the country's regions.

The research revealed incompetence on the part of OVD employees about the laws concerning the legality of sex work. 39.4% of OVD employees interviewed said that sex work was punishable by law, but were then unable to answer which law and what the corresponding punishment was.

41 sex workers (10.2% of those interviewed) said that they have been sexually abused by OVD employees, and 14 (34.1%) of those who reported rape said that they had been gang raped by the police.

Sex workers reported other violations that fit into the larger context of abuse, including not being informed of their rights at the time of detention (49.9%), refusal to allow the detained to call family to inform them of their detention (39.7%), beatings and torture (37.2%), illegal confiscation of passport (17.2%), rape (10.2%) and others.

50.6% of sex workers complained of unsatisfactory conditions in the temporary detention cells in the OVD, the IVS (Temporary Isolation Centers), and reception area.

In conclusion, sex workers' rights and freedoms are not respected in Kyrgyzstan. The government does not recognize the problem of systematic discrimination of sex workers, and as a result is not taking any measures to reverse existing discriminatory regulations, customs and practices.[119]

41. In its previous concluding observations, the Committee expressed its concern on the persistent reports of allegations of torture in breach of article 1 of the Convention, and other cruel, inhuman or degrading treatment or punishment (sometimes involving children) by law enforcement personnel, in violation of article 16 of the Convention (A/55/44, para. 74 (b)). Please explain what measures have been taken to address this problem, and provide detailed statistical data, disaggregated inter alia by age.

[119] See Appendix #9 to issue #40 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).

As indicated above, in 2012 an amendment was made to Article 305-1 (torture) of the Criminal Code of the Kyrgyz Republic, which toughtened the punishment for torture and added it to the list of grave and very grave crimes.

In April and September 2011 the Prosecutor General of the Kyrgyz Republic issued a decree "On the strengthening of the prosecutor's oversight of the enforcement of the ban on torture and other cruel, degrading and inhuman treatment."Another decree was also issued by the Prosecutor General "On urgent lodging of criminal cases of torture," and taking such cases into special consideration, have all materials and documentation about rejected cases of torture over the last ten years be sent to the Prosecutor General, as well as those that were temporarily stopped or terminated in the process of investigation to determine the legality of these decisions based on the documentation provided.

Notwithstanding these positive measures on the part of the Prosecutor General, reports of torture are not investigated properly and perpetrators of torture remain unpunished.

For more detailed statistical data, please see above.[120]

42. Please explain how, in practice, an independent monitoring can be carried out in Temporary Detention Facilities (IVS), under the Ministry of Internal Affairs. Please provide examples. Please explain whether there is any possibility, for independent monitors, to carry unannounced visits in such premises.

According to the Law on Custody, the President of the Kyrgyz Republic, the Toraga Zhogorku Kenesh. The Prime Minister of the Kyrgyz Republic, representatives of the Zhogorku Kenesh (parliament), the Ombudsman (Akyikatchy) are permitted to visit places of detention without special permission.[121]

According to the Ordinance "On guarding and convoy of suspects held in TDF (Temporary Temporary Detention Facilities)", stipulated by the Ministry of Internal Affairs decree #263 on March 29, 2010, TDF locations are to be inspected by the head of the DIA department no less than once a month, and by the deputy head of the DIA no less than twice a month.

According to the decree of the Prosecutor General #40 from April 12, 2011, the prosecutors are responsible for carrying out unannounced visits to the TDF and other DIA buildings to check the human rights situation in them. In addition, according to another decree issued by the Prosecutor General from July 21, 2008, the prosecutors review the legality and sentences of detainees every decade.

The management of the DIA conducts inspections of the TDFs, detainees' placement center, as well as the center of adaptation and rehabilitation of minors of the MOI. According to the department orders DIA management also is responsible for DIA facilities, which are the territorial agencies of the Prosecutor's office. Results of the inspections, including violations documented are registered in an inspection log.

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[120] See page 12, answer to issue #1 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).
[121] Law on the order of detention, Article 17, part 1.

Though the law stipulates measures by which places of detention should be monitored, the conditions of detention centers and the length of detention periods in TDF do not correspond to the requirements set out by the law.

From reading the inspection log, it is clear that monitors generally pay attention only to the violations concerning the length of detention periods, and the DIA representatives conducting visits typically limit themselves with wearing the service uniforms and asking whether or not the detainees have complaints. A standard entry in the inspection log reads: "No violations by servicemen observed, no complaints on the part of the detainees."

The inspection log states that there is "no any violations of the detention length." However, monitoring groups have observed violations of detention length in all TDF, both in the present as well as previously. While private visits by other monitoring organizations have been conducted, there has been no reaction from the DIA monitors, nor have any officials been held accountable for violations of the length and conditions of detention.

43. Please indicate what possibilities exist in practice for an individual who is arrested but whose arrest is not being registered yet, to be represented by a lawyer. In general, please indicate how access to a defence lawyer is provided, in practice, for those arrested in temporary detention facilities (TDF/IVS) or placed in pre-trial detention (investigation detention facility IDF/SIZO). Please provide statistical data on the numbers of detainees who have died in IVS or SIZO during the reporting period, indicating the reasons of death.

According to the national legislation, criminal proceedings are launched on an adversarial system where both parties are given an opportunity for accusation and defense. In the case of detention, the detainee is guaranteed the right to defense from the moment they arrive in the place of detention. Despite the requirement that the Kyrgyz Republic should not pass laws that would violate the adversarial proceedings, [122] in December 2011, amendments were made to the Law on the conditions of detention that seriously impeded detainees' access to a lawyer. According to article 17 of the law, in order for the defendant to meet with a lawyer, he must have provided a written notice from the investigator, prosecutor, or judge. This requirement was a serious obstacle to access to defense, as the defendant was directly dependent on the investigator and prosecution.
Often in practice obtaining this written notice requires a lot of effort and time, particularly when allegations of torture and cruel treatment are involved. According to the results of the IVS monitoring, done by NGOs in the framework of the Memorandum, practically all lawyers cited difficulties in meeting with their clients. On June 29, 2012, this norm was removed.[123]

According to the criminal procedure code of the Kyrgyz Republic, the detained have a right to counsel from the moment of actual arrival to the place of detention/interrogation.[124] Interrogation of the suspect must take place with the participation of a defense lawyer; however, in practice this requirement is not observed. From the above-mentioned IVS monitoring, 53.9% of detainees

[122] Criminal Procedure Code of the Kyrgyz Republic. Article 1 part 4.
[123] *See appendix #10 to issue #43 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).*
[124] Criminal Procedure Code of the Kyrgyz Republic. Article 40.

surveyed said that they did not have a lawyer present at the time of their interrogation and 33.2% reported that they did not have a lawyer present during court proceedings.

Another problem in the provision of effective counsel is the existence of so-called “pocket” or “duty” lawyers, who often are not qualified to give legal counsel and only perform the formalities of the process, like signing the necessary protocols and documents. According to the IVS civil society monitoring, in 62.7% of cases a lawyer was appointed by the government.[125] Usually such lawyers cooperate closely with law enforcement agencies, sometimes even facilitate torture and cruel treatment of the suspect.

The lack of oversight mechanisms of the quality of work of such lawyers brings about the solidification of the poor quality free legal service, or the widespread violation of legal ethics by lawyers. Therefore it is the view of the authors of this report that legal services provided by the government are ineffective.

The criminal legislation stipulates the right of a lawyer to hold consultations with his client in private and without any limits on the length of the consultation.[126] However, in practice, there was not a single case when a defendant was able to consult with his lawyer in total confidence.[127]

Other issues

46. Given that the State party has acceded to the Optional Protocol to the Convention, on 29 December 2008, please provide information on the measures taken so far in connection with the establishment of the national preventive mechanism.

Another essential guarantee in the protection from torture is civil society monitoring of detention facilities. It is considered that the more open and transparent a place of detention is, the fewer the violations are. Such monitoring activities could be carried out in the form of a National Mechanism for the Prevention of Torture (National Preventative Mechanism – NPM).

On June 7, 2012, the Zhogorku Kenesh (Parliament) of the Kyrgyz Republic adopted, in its third iteration, its law “On a national center for the prevention of torture and other cruel, inhuman and degrading treatment and punishment,” which will fulfill functions of the NPM in accordance with the Optional Protocol to the Convention Against Torture.

A wide variety of stakeholders were involved in the discussions of the law on the NPM model, including government officials, civil society, the ombudsman, international organizations focused on the worldwide prevention of torture.

The law clearly states that the NPM has access to places of detention without prior notice, the right of NPM to independently select and arrange a team based on criteria they independently develop.

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[125] See appendix #11 to issue #43 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).
[126] Articles 42 and 48 of the Criminal Procedure Code of the Kyrgyz Republic
[127] See appendix #12 to issue #43 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).

Gender balance should be taken into account in the selection of the team, as well as representatives of different professions, ethnicities and those with limited abilities.

Recommendations on how to take measures to improve the situation will be issued according to the results of the NPM visits. Government agencies will be required to take the recommendations into account and to have a dialogue with NPM in order to put the recommendations into practice. Thanks to how actively civil society has sought out a constructive dialogue with officials on uprooting the practice of torture, the unique model of the NPM was passed, which will become a truly effective working group – and its establishment will become a new real step towards the prevention of torture.

It is important to mention the length of the process by which the National Center for the Prevention of Torture and Other Forms of Inhuman and Degrading Treatment (further the National Center for the Prevention of Torture) was established. The given time period to form the Coordinating Council (the governing body of the Center of Prevention of Torture) was exhausted because of the council's majority and minority fractions' delay to nominate representatives to the Coordinating Council. Because of that meeting of the Coordinating Council of the center was postponed.

The application period for the position of the director of the National Center for the Prevention of Torture ended on May 20, 2013; however, the list of requirements for the position was published on the Ombudsman's website significantly later. Due to this, candidates were given more time to prepare their candidacy and the period was extended to June 12, 2013. Ultimately, after a two-week selection process, a candidate was selected for the position of the director of the center.

While the director of the center has been selected, most of his work currently involves organizational matters, as the center does not even have an office or a legal address. Also, despite a director of the center is already appointed, operational costs have not been budgeted for the 4th quarter of 2013 nor for 2014, so the director of the center is obliged to do the organizational work on a volunteer basis.

47. Taking into consideration the relevant resolutions of the Security Council, please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, explain whether these measures have affected human rights safeguards in law and practice, and how the State party has ensured that measures taken to combat terrorism comply with all its obligations under international law.

During practical implementation of the Kyrgyz Republic's 2006 Strategy on the War on Terrorism and Extremism there were mass human rights violations which are characterized not only by violence and lawlessness, but also arbitrary punishment by special services forces.

In October 2008, under the pretext of the war on religious extremism, authorities illegally detained 32 people from the Nookat region, among whom there were women and minors. Law enforcement agents performed various acts of violence and torture and also threatened the families of the detained to pressure the latter to admit to being members of religious-extremist organizations and inciting ethnic conflict. None of 32 detainees had lawyers. No international organizations or media were allowed to observe the judicial proceedings and detainees' reports of torture used by law enforcement agents (DIA (OVD) or SCNS (GKNB) – State Committee for National Security) were not accepted by the court. All defendants were sentenced from 9-20 years in prison.

In the beginning of 2009, there were mass detentions in several regions of the country. Law enforcement agents used illegal interrogation methods on the detainees. The number of detainees charged with allegations of membership in the religious-extremist organization Hizb ut-Tahrir increased across the country, including women. The detained were charged with unrelated offenses such as separatism, banditry, threat to the constitutional order, inciting inter-ethnic animosity – all of which carry severe punishment and lengthy prison sentences.[128]

It is important to note that the law on terrorism does not stipulate compensation for abuse withstood during counter-terrorism operations.

49. With reference to the Committee's previous recommendations (A/55/44, para. 75 (h)), please indicate whether the State party has taken any steps to make the declarations under articles 21 and 22 of the Convention?

In 2006-2007, a group of Kyrgyzstani human rights NGOs took steps to further the Kyrgyz Republic's recognition of the Committee Against Torture competence to examine individual statements in light of articles 21 and 22 of the Convention Against Torture. The human rights activists developed a briefing that was given to the Parliamentary Committee and translated into the state language. Unfortunately, the lengthy process of working individually with each member of the parliament was temporarily stopped in light of the dissolution of parliament by the president in 2007.

Currently the issue is being discussed actively among civil society and will be raised again at the governmental level.

[128] See appendix #13 to issue #47 in the List of issues prior to the submission of the second periodic report of Kyrgyzstan (CAT/C/KGZ/2).

RECOMMENDATIONS

FULFILLMENT OF OBLIGATIONS BY THE KYRGYZ REPUBLIC UNDER INTERNATIONAL AGREEMENTS

1. Provide continuous parliamentary control over fulfillment of international treaty obligations on human rights and freedoms by the Kyrgyz Republic and timely reporting on the implementation of these commitments.
2. Develop and adopt a realization plan, recommendations, concluding observations and decisions of the Universal Periodic Review (UPR), the Special Procedures of the UN Human Rights Council and treaty bodies by the Government of the Kyrgyz Republic.
3. Initiate a declaration on recognition of the competence of the UN Committee against Torture to consider individual communicatons on violation of the right to freedom from torture in accordance with article 22 of the UN Convention against Torture.

RECOGNITION AND ENFORCEMENT OF DECISIONS OF INTERNATIONAL HUMAN RIGHTS BODIES BY THE KYRGYZ REPUBLIC

1. Develop an effective mechanism for the implementation of decisions by the international human rights bodies that establish violations of rights and freedoms and implement those already adopted by the UN Committee on Human Rights in relation to the Kyrgyz Republic.
2. Develop and discuss the draft legislation on making amendments to the Criminal Procedural Code stipulating that decisions of international human rights bodies, including those of the UN Committee against Torture, serve as the basis for the resumption of proceedings under the new circumstances.

CREATING AN EFFECTIVE MECHANISM OF VERIFICATION OF THE ALLEGATIONS OF TORTURE

1) Provide of a quick review of torture statements and complaints

1. Introduce special procedures to the legislation for reviewing of complaints of torture. Establish a maximum term of three days for consideration and taking an action on allegations of torture. Provide an exhaustive list of exceptional cases where the examination of the application of torture and decision can be made within a period not exceeding ten days.
2. Ensure that the prosecutors comply with the criminal procedure legislation on compulsory acceptance and review of complaints and reports of crimes in cases when the defendants allege instances of torture when they are placed into custody during proceedings.
3. Develop an effective mechanism to receive and consider torture complaints at the places of detention with full respect of the principle of confidentiality.

2) Increasing the efficiency of the review of complaints of torture, claimed during consideration of primary criminal case on merits.

1. Ensure that the prosecutors (public prosecutors) comply with requirements of Article 155 of the Criminal Procedure Code of the Kyrgyz Republic on the obligation of acceptance and review of

statements and reports of crime in cases where accused claim during consideration of the main criminal case on merits they were subjected to torture..

ESTABLISHMENT OF EFFECTIVE MECHANISMS FOR INVESTIGATION OF TORTURE

2. Introduce special prosecutors to conduct investigations into allegations of torture by the officials.

ENHANCEMENT OF WARRANTIES FOR FREEDOM FROM TORTURE IN DETENTION

1. Make amendments to the Criminal Procedure Code regulating conduct of all measures from the date of receipt of the notification of crime before criminal proceedings, determining the status of the detainee before suspecting him, establishing his rights and obligations.
2. Make amendments to Article 40 of the Criminal Procedure Code ("on the rights and obligations of the suspect"), developed by the Working Group in the "Millennium Challenge" Threshold Program, and establish the suspect's rights to:
   1) Defend himself in person and by an attorney from the moment of detention;
   2) Make one free telephone call to someone in the family and in the absence of family members – to one of the relatives or any other person in his discretion, notify them of his arrest and the place of detention;
   3) Not to testify against himself or to plea guilty;
   4) Be brought to court for a decision on the legality of his/her detention within 48 hours from the moment of detention or be released by the decision of the prosecutor, the investigator, with a subsequent judicial review of the lawfulness of his detention;
   5) To communicate freely with his lawyer in private, and without being limited with the number and duration of conversations.
3. Make amendments to the Article 95 of the Criminal Procedure Code ("on the detention of a person suspected of a crime"), developed by the Working Group within the framework of the "Millennium Challenge" Threshold Program, according to which the protocol on detention of a person suspected of committing a crime shall be made at the time of his factual arrest. If, for objective reasons, the protocol conclusion is impossible at the time of the factual arrest, the protocol is concluded immediately after the suspect is brought into the body of inquiry (investigation). In any case, at the time of the actual arrest the suspect must be informed on the reasons of his/her detention, of his/her right not to testify against himself/herself, and right to a legal assistance of a counsel. A copy of the report with the list of rights and obligations is immediately handed over to the detainee, and within twelve hours is given to the prosecutor. The rights of the detainee should be outlined taking into account the ethnicity of the suspect, as well as its readability.
4. Make amendments to Article 99 of the Criminal Procedure Code ("on informing relatives about the detention of a suspect"), developed by the Working Group in the "Millennium Challenge" Threshold Program, according to which at the time of the factual arrest the investigator shall give notice of the detention of a suspect to any member of his/her family, and in the absence of a relative or a close person grant to the suspect himself a free right of notification. If, for objective reasons, a notice at the time of the actual arrest is not possible, this opportunity should be given immediately after a suspect is brought into the body of inquiry. Information about the notification should be reflected in the protocol of detention.

5. Make amendments to the Criminal Procedure Code, developed by the Working Group in the "Millennium Challenge" Threshold Program governing judicial procedures for verification of the legality of detention of the suspect, released by order of the investigator or prosecutor.
6. An exception from Article 325 of the Criminal Procedure Code ("on the release of the accused from the custody") is a provisions that the acquittal of the defendant, as well as the decision of conviction without imposing punishment or exemption from punishment, or probation, or a sentence unrelated to the deprivation of liberty or the termination of criminal proceedings in production, the defendant held in custody shall be released immediately, right after the verdict comes into force.

SAFEGUARDS AGAINST TORTURE IN DETENTION PLACES

1.Introduce the practice of centralized registry (the database) of all detainees and remand prisoners, with details of the persons who carried out the arrest with the indication of time of the detention and the time he or she was delivered to a law enforcement body, and movements inside and outside of the prison.
2. Introduce amendments to the Law "On the Procedure and conditions of detention of persons suspected or accused of committing a crime" that will establish an absolute prohibition on:
a) Censorship of correspondence of persons held in custody, addressed to his or her attorney, members of the Parliament of the Kyrgyz Republic, Akyikatchy (Ombudsman) of the Kyrgyz Republic, the director of the National Center of the Kyrgyz Republic for the Prevention Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as appeals to the international human rights bodies.
b) Placing a juvenile with *positively characterized adult prisoners* in the same cell of the detention center.

IMPROVE CONDITIONS IN PLACES OF DETENTION

1. Ensure transparency of budget allocation and spending of funds to improve the conditions in detention centers.
2. Ensure appointment of a committee of specialists focusing on different areas to conduct an urgent review of all places of detention with a view to the immediate closure of those unfit for the detention of prisoners.
3. Clear implementation of "Umut 2" strategy of the penitentiary system of the Kyrgyz Republic for 2012 - 2016, approved by the Government of the Kyrgyz Republic on May 15, 2012.
4. Reform structure of the medical units of the State Service of Execution of Punishment under Government of the Kyrgyz Republic and transfer the medical service to the competence of the Ministry of health of the Kyrgyz Republic.

PROVIDING EFFECTIVE LEGAL AID TO VICTIMS OF TORTURE

1. Create a legislative framework for the adequate functioning of a lawyer.
2. Establish a professional association of lawyers within the framework of the judiciary system reform of the Kyrgyz Republic.
3. Develop and implement the national legal aid programs that ensure access to legal counsel for all detainees.
4. Improve the effectiveness of the Law of the Kyrgyz Republic "On the legal aid guaranteed by the State" through the explanatory measures.

5. Make amendments to the Criminal Procedure Code, according to which, if the citizens are provided with a lawyer not from the list of the state-guaranteed legal aid (SGLA), it will be considered as a significant breach of the law and will entail cancellation of the sentence.
6. Increase remuneration for counseling services guaranteed by the state in order to attract experienced and qualified lawyers who deliver quality service.
7. Creating a mechanism for monitoring of the quality of legal aid.
8. Ensure that the Roster of lawyers includes sufficient information and enables the detainees to invite an attorney of his/her own choice.

EFFECTIVE DOCUMENTATION OF TORTURE AND INDEPENDENT EXPERTISE

1. Implement the Istanbul Protocol in all programs of undergraduate and postgraduate training of health care workers (doctors, nurses, paramedics).
2. Implement the Istanbul Protocol in the practice of all agencies providing therapeutic and diagnostic care, regardless of departmental affiliation.
3. Implement the Istanbul Protocol as an indispensable diagnostic standard based on the principles of evidence-based medicine.
4. Introduce the documentation of torture on the basis of the Istanbul Protocol into the existing statistical reporting system of the health care providers, into monitoring and evaluation of the therapeutic and diagnostic facilities.
5. Ensure that all members of the State Forensic Medical Service receive special training in accordance with the Istanbul Protocol.
6. Introduce a single form of medical examination jointly with the Ministry of Health for determining health status and the presence of injuries of the prisoners at the time of his or her detention, as well as after transferring him or her from the detention center for investigation.
7. Develop a plan for the phased transfer of the medical staff of closed institutions under the Ministry of Health.
8. For the effective documentation of signs of torture, introduce a standard form of medical examination to be used at the time of the detention developed jointly with the doctors of these institutions and independent experts of human rights NGOs.

CIVIL CONTROL

1.Consider and adopt the draft Law “On the bodies of civilian control over the observance of human rights in the internal affairs bodies”.
2.Ensure that public supervisory boards (PSB) have capabilities seamlessly and effectively carry out public control in places of detention, and to publicize the results of public scrutiny and recommendations.

NATIONAL PREVENTIVE MECHANISM

1.Ensure the allocation of budget funds and the provision of adequate human and other resources to the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for effective operation.

REHABILITATION AND RE-SOCIALIZATION OF VICTIMS OF TORTURE

1. Develop a mechanism for filing a civil claim by the victim of torture to obtain redress for the harm caused as a result of torture. In this case, the possibility of obtaining compensation should not be contingent on a finding of guilt by the verdict. Provide adequate and timely procedures for payment of compensation from the state budget.
2. Develop a mechanism for the psychological and / or medical rehabilitation of torture victims.
3. Develop social, psychological and educational work of State Service of Execution of Punishment and the appropriate support from the state, particularly in terms of financing, including the National Strategy for Development of the Penitentiary System.
4. Develop standards for the provision of social and psychological recovery, rehabilitation services for victims of torture, relevant documentations and introduce the system of assessing the effectiveness of these services.

LAW ENFORCEMENT BODIES REFORM

1. Change the criteria for the evaluation of the activities of internal affairs bodies, so that the police are not focused on the percentage of resolved cases, but on public trust and safety. The indicators of the assessment of the police should be reformed under the Ministry of Interior Affairs Reform. The value of quantitative indicators should immediately be significantly reduced. The system of evaluation must include public opinion poll on the activities of the police, which would be carried out by independent institutions. More modern integrated indicators in the assessment of the police, such as citizens' sense of security, the assessment of the police (the total assessment, the satisfaction with the results of work, the satisfaction with the communication), the evaluation of delinquency, and assessment of the scale of human rights violations should be considered under the Ministry of Interior Affairs Reform.
2. Senior officers of law enforcement authorities should not only declare zero tolerance for torture, but also condemn the use of torture, citing specific examples of the commission of the crime by employees of appropriate law enforcement agency and the subsequent sanctions.
3. Ministry of Interior Affairs, State Service of Execution of Punishment under the Government of the Kyrgyz Republic, State Committee for National Security of the Kyrgyz Republic, the General Prosecutor of the Kyrgyz Republic and other departments should regularly inform the public about the use of torture (publish information in the criminal reports), received by the reports of torture and ill -treatment from members of the concerned department.

TRAINING AND RETRAINING OF PERSONNEL

1. Review and continuously improvet the system of legal education and training of law enforcement personnel, in particular, employees of operatively-search services, investigative units and services providing for the conditions of detention of persons. Particular attention should be paid to their moral and professional qualities.
2. Compulsorily introduce international standards into the curriculum of educational system and the discussion in the learning process the issues of inconsistencies of national legislation and practice with international standards. The program should include all the views of the UN Committee on Human Rights, made in respect of the Kyrgyz Republic, as well as other decisions/recommendations of the treaty bodies of the United Nations and the European Court on Human Rights, and the obligation to investigate torture and ill-treatment.

ANNEX

Annex No. 1 to question No. 4 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

1) **Mr. Fiziev Firuzhan Halykovich**, date of birth: April 29, 1967, a customs officer, was arrested by the State Committee for National Security of the Kyrgyz Republic on the night of July 29 to 30, 2011 during the raid on suspicion of illegal possession of firearms. The next day Mr. Fiziev died in the building of the State Committee for National Security.[129] His body showed signs of tranquilizer, bruises, and fractures of the ribs.
   On August 9, 2011 the General Prosecutor's Office ordered the initiation of criminal proceedings against two members of the State Committee for National Security of the Kyrgyz Republic on the grounds of crimes under Articles 104 Part 4 (*"the intentional infliction of harm, endangering life, that resulted in the death of the victim"*) Article 305 part 2, § 4, 5 (*"commission of an action by an official that is clearly beyond his/her powers and that violated the rights and legitimate interests of citizens or legal entities or legally protected interests of society or the state, with the use of weapons or special devices, as well as by inflicting serious consequences"),* 305-1 (*"torture"*) of the Criminal Code of the Kyrgyz Republic.
   Currently, two of the defendants - officers of State Committee for National Security – were removed from office by the court and are under house arrest during the period from 6:00 pm till 6:00 am. Currently the criminal case against them is before the Military Court of Bishkek garrison.

2) **Mr. Usekeev Kazybek Zhunushovich**, date of birth: December 16, 1973, at around 5:00 pm on December 27, 2010 he was arrested on suspicion of the bombing at the Sport Complex (Sport Palace) on November 30, 2010 in Bishkek city. Shortly after his arrest, Mr. Usekeev K. was tortured in a building of State Committee for National Security in order to extract confessions. However, shortly after the interrogation Mr. Usekeev K. was released, State Committee for National Security officers beforehand took a receipt from him stating that he does not have any complaints against the officers of State Committee for National Security. In the present case the Military Prosecutor's Office, refused to initiate criminal proceedings against the officers of State Committee for National Security 7 times. These refusals were appealed twice to the Military Court of the Kyrgyz Republic. Currently, the materials were sent to the Military Prosecutor's Office to organize additional verification.

3) **Mr. Topozov Mairambek Askarbekovich**, born in 1973, was arrested on January 5, 2011 by police officers and officers of "Alpha" unit of the State Committee for National Security of the Kyrgyz Republic and is detained in Alamudun district Department of Interior Affairs of Bishkek city, where he was beaten for several hours. Mr. Topozov did not see persons who beat him since they were wearing masks. In the present case the prosecutor's office twice refused to initiate criminal proceedings against the police officers. At present, the case file sent to the prosecutor's office of Alamudun district to organize additional verification.

[129] *Executions in democratic Kyrgyzstan*, article available at http://diesel.elcat.kg/lofiversion/index.php?t8934728.html.

4) **Mr. Erkinbekov N. B.** On January 18, 2013 at about 10:30 pm senior detective of the State Committee for National Security Mr. Ryskulov T. I. enter the house where Mr. Erkinbekov N. B. lived and threatened Mr. Erkinbekov N. with a service weapon. At the same time, he forced the victim to get on his knees and say a prayer; he threatened to kill him and tried to strangle Mr. Erkinbekov N.
On January 19, 2013 on this case Talas district Department of Interior Affairs of Talas Province initiated a criminal case under article 234 part 3, § 2 (*"hooliganism, that is the deliberate actions grossly violating public order or generally accepted norms of behavior associated with violence or the threat of violence, as well as the destruction or damage of property, combined with the use or threat of use of weapons or objects used as weapons"*), Art. 305 Part 2, § 4 (*"commission of an action by an official that is clearly beyond his/her powers and that violated the rights and legitimate interests of citizens or legal entities or legally protected interests of society or the state, with the use of weapons or special")* of the Criminal Code of Kyrgyz Republic.
On May 22, 2013 a criminal case against Mr. Ryskulov T. was terminated by the Military Court of Bishkek garrison and mandatory outpatient supervision and treatment by a psychiatrist was assigned (compulsory medical examination at the place of residence).

5) **Mr. Abashev Sh. K.**, born in 1973, ethnic Uzbek. On October 14, 2009 at around 6:00 am seven drunken employees of Jalalabat region department of State Committee for National Security broke into his house, searched and took him to the Department of State Committee for National Security, where another 10 people were detained. All the detainees were forced to stand with their hands up from morning till night. Those who could not stand were beaten and kicked. After that, they were led by one to the investigator's office of State Committee for National Security Mr. Boenov. A lawyer was not present during the interrogation of the investigator Mr. Abashev Sh., and when he refused to sign the papers, the investigator invited the two young men and complained to them that Mr. Abashev talks too much and does not want to sign the papers. After these words Mr. Abashev was taken to a dark room on the first floor, where at the moment the other two officers were severely beating the detainee Mr. Hankeldiev Abaz. They beat him up until he signed the papers. Then they started beating Mr. Abashev. When he was punched he hit the wall with his head. Out of fear for his lives and health Mr. Abashev signed the papers, only after that they provided him a lawyer. Mr. Abashev was afraid to file a complaint of torture, because the torture was also practiced in the temporary detention centers. He was subsequently convicted by a court to 17 years in prison.
On August 22, 2013 a complaint of Mr. Abashev Sh. was sent to the General Prosecutor's Office of the Kyrgyz Republic and was, later, forwarded to the prosecutor's office of Jalal-Abad province for verification.

6) **Mr. Azimjan uulu Shukhrat**, born in October 12, 1975, ethnic Uzbek. On August 4, 2009 at around 6:00 am 10-15 officers of the State Committee for National Security searched his home without a warrant. Pick up a passport of his wife and threatening to take her and a three-month baby, they made Shukhrat sign the papers. After that they took him to the detention center of Bazar- Kurgan district, where he was held for a month and was forced under torture to confess in other crimes.
On august 22, 2013 complaint of Mr. Azimjan uulu Shukhrat was sent to the General Prosecutor's Office of the Kyrgyz Republic and was, later, forwarded to the prosecutor's office of Jalal- Abad province for verification.

7) **Mr. Giyazov Sheraly**, date of birth March 7, 1970, ethnic Uzbek. On August 4, 2009 at around 6:00 am officers of the State Committee for National Security searched his home and took him to Bazar-Korgon District Department of State Committee for National Security. There Mr. Giyazov saw another 10 detainees who were beaten by officers. Then they started to beat Mr. Giyazov, they punched and kicked him, and beat with rubber truncheons. They humiliated him, made him to push-ups on the floor. Officer of the State Committee for National Security named Zamir extorted money from him, and, when he refuse since he was innocent, they led Mr. Giyazov in the office of the head of the department, where he continued extortion with a proposal to release him and let to the family and children in the case if he gives money. After another failure he was taken to a room where at that time other detainees were beaten and tortured.
   Relatives of Mr. Giyazov saw through a hole in the fence how Mr. Giyazov and the others were beaten by about 15 officers of State Committee for National Security, including Mr. Farhad Kozubaev. After three hours of torture Mr. Giyazov, together with other detainees was taken to the department of Jalalabat region State Committee for National Security, where there were several detainees, including juvenile Samardin with his father. The officers kicked everyone in the kidneys. Mr. Giyazov was beaten, tortured with electric shocker and put a bag over his head. After that, he was brought into a room and forced to sign a confession, and only when they obtained a confession they invited a lawyer. In the evening, at about 9:00 pm Mr. Giyazov was taken to the temporary detention center of Jalal – Abad Department of Interior Affairs, where an officer of the State Committee for National Security named Zamir together with the head of the temporary detention center also tried to extort money and promised to let him go if he pays them. At repeated refusal Mr. Giyazov was detained in the cell of the temporary detention center.
   In 2011, the complaint against officers of Jalalabat region department of State Committee for National Security filed to the General Prosecutor's Office of the Kyrgyz Republic from his wife Mrs. Giyazova Gulnara Giyazidinovna was not granted. On August 22, 2013 complaint was re - directed to the General Prosecutor's Office of the Kyrgyz Republic and was, later, forwarded to the prosecutor's office of Jalal- Abad province for verification.

8) **Mr. Bibolotov Ulan Raimkulovich**, date of birth August 21, 1981, on October 12, 2010 at around 5:00 pm was arrested by the State Committee for National Security on suspicion of membership in a banned religious extremist party "Hizb -ut- Tahrir" and taken to a remand prison of the State Committee for National Security, where he was tortured by three officer, one of them is named Samat, a second deputy chief of the remand prison named Bakyt. Torture was used to extract confessions, to intimidate and humiliate the feelings of the believer Mr. Bibolotov. For example, employees stripped him naked in the shower room and handcuffed to a radiator when he was left hanging in this position for a full hour before the woman. And they laughed at him and threatened that will hang there until morning. When the detainee Mr. Bibolotov spoke about his rights, the officer named Samat hit his head on the concrete wall. After this they twisted his both arms and handcuffed him, 4 officers took him into the cells of the remand prison, where three officers continued beating him for half an hour and threatened not to complain.
   On October 13 around 10:00 am deputy head of the remand prison entering the cell, immediately hit Mr. Bibolotov in the chest and head his right fist. Then Mr. Bibolotov got another punch with elbow to the neck and fell to the ground. As a result of torture Mr.

Bibolotov was injuries and got psychological trauma. At present, the case file is forwarded to the General Prosecutor's Office and other higher authorities for verification.
Annex No. 2 to question No. 5 (b) of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
On June 13, 2010 during the ethnic conflict policeman of Bazar-Korgon district Mr. Myktybek Sulaimanov was killed. Prominent human rights activist Mr. Askarov A. was arrested as an accused person. On June 16 Deputy District Attorney Ms. Jamilya Turazhanova visited Mr. Askarov in the cell of the temporary detention center showed him the Criminal Procedure Code and told that although in the past he has referred to this code when he wrote about police brutality, "*In this building another criminal procedure code will act against you*".[130] After an interrogation by police Mr. Askarov was taken to the prosecutor where the prosecutor Ms. Turazhanova chastised investigators by saying: "You kept him for three days and did not get what we need... You can kill him".[131] After these words, the police officers beat Mr. Askarov; especially there were heavy blows to the kidneys.[132]
Annex No. 3 to question No. 5 (c) of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
The case of Mr. Kelgenbaev M. A. According to Mr. Kelgenbaev, on July 29, 2011 at around 6:00 pm was arrested by police and taken to the police department in Chui province, where for several hours in a fixed position he was beaten with truncheon, punched, kicked in the back, head, heels and ribs. During the beating, he lost consciousness several times, and vomited two times. He recovered consciousness when he was slapped on the face. Several times was strangled to unconsciousness when they put bag over his head. He was beaten in the kidneys and genitals. One man sat on the stomach of Mr. Kelgenbaev and hit with police truncheon on the abdominal muscles, saying that: "We will make sure that you will for to the bathroom involuntarily, and then we will undress and take pictures of you". After that, he was handcuffed to a chair, and remained in this position till the morning. During the night officers periodically approached Mr. Kelgenbaev and punched him on the ears, neck, in the region of the thyroid cartilage. All this time the officers wanted him to confess to a crime. In the morning when they brought a police truncheon, wrapped with a plastic bag, and threatened with sexual assault, Mr. Kelgenbaev agreed to sign all documents. In the evening of July 30, 2011 when he was sent to Sokuluk territorial district hospital for an examination by doctor Mr. Asanbaev, who prior to the examination found out Mr. Kelgenbaev was arrested for murder, he did not conduct examination and without specifying the date and time of the examination, and without putting his personal stamp, wrote the conclusion: "There are no injuries, can be kept in the detention center". After such a "medical examination" he was taken to the detention center Sokuluk district department of interior affairs.

[130] Statement of Mr. A. Askarov of July 5, 2012, paragraph 29. A statement of Mr. Askarov to the Supreme Court of the Kyrgyz Republic of December 28, 2010.
[131] Statement of Mr. A. Askarov of July 5, 2012, claim 31. See also Report of the International Commission of lawyers, paragraph 49.
[132] Statement of Mr. A. Askarov of July 5, 2012, paragraph 32. A statement of Mr. Askarov to the Supreme Court of the Kyrgyz Republic of December 28, 2010.

On August 3, 2011 Mr. Kelgenbaev was examined by an independent doctor of the Public Association “Youth Human Rights Group” who issued the conclusion: “Diagnosis: Closed head injury. Concussion of the brain. Broken ribs. Bruises on kidneys and scrotum. Multiple soft tissue injuries. Needs hospitalization”. In two days Mr. Kelgenbaev was hospitalized.

Annex No. 4 to question No. 9 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2)

Digital report

of the applications received by the Ombudsman's Office

for 12 months of the year of 2011, as of December 31, 2011

Applicant's name	Number of applications, complaints received since the beginning of the year					Exercised			Under consideration		Requests made	Answers received on the request	Response action (reaction)	Consideration of complaints with site visits	How many times attended the court hearing	Responses to applicants	Or con atic
	Total	Including: female	retired	group	about the presence in court	taken from the control	granted cases	in the process of taking from the control	Total	Expired applications							
Total in CA	**1500**	**706**	**59**	**148**	**238**	**1061**	**70**	**17**	**422**	**65**	**1078**	**1186**	**26**	**236**	**452**	**1071**	**29**
Osh province	150	64	19	7	30	111	35	0	38	0	138	112	*1*	26	30	109	96
Jalal-Abad province	77	33	11	11	4	53	11	0	24	0	111	108	*3*	19	6	46	16
Batken province	99	73	25	10	26	96	19	0	3	0	206	185	*0*	0	26	96	1
Issyk-Kul province	105	39	2	8	8	89	20	0	16	10	103	92	*0*	29	13	89	14
Naryn province	89	49	21	8	15	67	30	67	22	1	106	83	*4*	48	24	67	37
Talas province	78	25	3	9	21	18	11	55	5	0	63	58	*0*	16	41	73	14
Total in regions	**598**	**283**	**82**	**53**	**104**	**434**	**126**	**122**	**108**	**11**	**727**	**638**	**8**	**138**	**140**	**480**	**18**
Total number of written complaints	**2098**	**989**	**141**	**201**	342	**1495**	**196**	**139**	**530**	**76**	**1805**	**1824**	**26**	**374**	**592**	**1551**	**47**
Number of people on 201 filed written group complaints	**3579**																
Number of oral consultations	**4704**																

Digital report
of the applications received by the Ombudsman's Office
for 12 months of the year of 2011, as of December 31, 2011

Applicant's name	Number of applications, complaints received since the beginning of the year					Exercised			Under consideration		Requests made	Answers received on the request	Response action (reaction)	Consideration of complaints with site visits	How many times attended the court hearing	Responses to applicants	Oral consultations
	Total	Including				taken from the control	granted cases	in the process of taking from the control	Total	Expired applications							
		female	retired	group	about the presence in court												
Total in CA	**1760**	**888**	**153**	**104**	**231**	**1154**	**168**	**0**	**589**	**0**	**1218**	**1375**	**20**	**522**	**424**	**1419**	**3169**
Osh province	325	174	43	28	50	267	100	0	55	0	232	132	*0*	72	50	210	1416
Jalal-Abad province	70	28	4	9	4	60	26	0	10	0	98	72	*0*	10	4	60	165
Batken province	110	55	48	5	28	104	31	6	6	0	241	205	*0*	31	28	104	36
Issyk-Kul province	159	64	15	11	27	120	50	0	39	18	148	120	*0*	20	67	122	217
Naryn province	126	74	35	16	23	116	46	0	10	1	132	117	*0*	109	32	108	214
Talas province	77	38	11	10	13	58	16	14	5	0	55	51	*0*	25	36	72	181
Chui province	**216**	**124**	**42**	**12**	**97**	**193**	**64**	**0**	**23**	**11**	**127**	**72**	**0**	**65**	**173**	**198**	**210**
Total number of written complaints	**2843**	**1445**	**351**	**195**	473	**2072**	**501**	**20**	**737**	**19**	**2251**	**2144**	**20**	**854**	**814**	**2293**	**5608**
Number of people on 195 filed written group complaints	**6050**																
Number of oral consultations	**5608**																
Total number of people that filed an applications	**14306**																

Digital report (preliminary)
of the applications received by the Ombudsman's Office
for 8 months of the year of 2013, as of August 29, 2013

Applicant's name	Number of applications, complaints received since the beginning of the year					Exercised			Under consideration		Requests made	Answers received on the request	Response action (reaction)	Consideration of complaints with site visits	How many times attended the court hearing	Responses to applicants	Oral consultations
	Total	Including				taken from the control	granted cases	in the process of taking from the control	Total	Expired applications							
		female	retired	group	about the presence in court												
Total in CA	**1041**	**520**	**156**	**125**	**197**	**520**	**41**	**0**	**488**	**0**	**564**	**690**	**11**	**x**	**x**	**881**	**751**
Osh province	207	102	16	17	32	162	60	0	64	7	116	78	*2*	33	32	85	730
Jalal-Abad province	67	29	6	4	4	47	6	0	14	0	76	48	*2*	2	4	11	152
Batken province	74	x	17	6	17	72	20	0	2	0	144	167	*0*	20	20	78	21
Issyk-Kul province	94	47	9	10	23	90	51	0	4	0	86	70	*2*	12	28	68	190
Naryn province	56	34	9	4	15	49	25	49	7	0	66	54	*1*	57	15	49	150
Talas province	54	25	6	4	17	10	0	42	2	0	53	50	*0*	13	42	52	103
Chyi province	**109**	**57**	**10**	**5**	**42**	**x**	**14**	**72**	**37**	**0**	**67**	**42**	**0**	**24**	**152**	**75**	**160**
Total number of written complaints	**1702**	**814**	**229**	**175**	347	**950**	**217**	**163**	**618**	**7**	**1172**	**1199**	**18**	**161**	**293**	**1299**	**2257**
Number of people on 175 filed written group complaints	**7600**																
Number of oral consultations	**2257**																
Total number of people that filed an applications	**11384**																

Annex No. 5 to question No. 29 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
The case of Mr. Akmatov T. Mr. Turdubek Akmatov was arrested on May 3, 2005 at around 9:00 am by police officers of Uzgen district Department of Interior Affairs. He was taken to the Department of Interior Affairs where he was detained without charges for more than 10 hours. During this time, six police officers questioned him about the alleged theft with the use of torture and ill-treatment. In the evening, at around 7:00 pm he was released. Mr. Akmatov T. died on the same night when he got back home. During the forensic examination it was found that death was due to a massive brain hemorrhage caused by a blow with a blunt heavy object. Later, a group of forensic experts concluded that the injuries were inflicted in a few hours before death. The father of the deceased Mr. Akmatov T. filed a claim to the prosecutor's office and the head of Uzgen district department of interior affairs with a request to open a criminal investigation into the death of his son. The prosecutor's office opened a criminal case only 21 days later. Terms of investigation was extended twice. After the second extension the investigation was terminated and reopened four more times and on the fifth time the case was suspended in July 2009, in other words in four years after the death of Mr. Akmatov T. Investigation is suspended up until now.
Annex No. 5 (a) to question No. 31 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
The case of Ms. Ergasheva K. Ms. Ergasheva Kumaray, a native of Batken province, was detained by police on September 24, 2007 in the village of Kaylang of Leilek district of Batken province. She was detained for 1 year and 8 days and later was acquitted by the court. Pervomayskiy district court of Bishkek city on the reparation for compensation for moral and material damages on August 17, 2009 issued a decision on the partial satisfaction of the claim of Ms. Ergasheva K.: to reimburse Ms. Ergasheva K. from the Ministry of Finance of the Kyrgyz Republic 13266 soms (about 300 U.S. dollars) as compensation for material damage and 50,000 soms (about 1,100 U.S. dollars) as compensation for moral damages. Ms. Ergasheva K. was satisfied with the decision of the court, and she was paid the full amount. It should be noted that this compensation was paid as a result of bringing the perpetrators to crime - enforcement officers - not under "torture", but they were accused of committing crimes under other "torture related" articles of the Criminal Code of the Kyrgyz Republic.
Annex No. 6 to question No. 33 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).
The case of Mr. Nuraev I. On October 31, 2012 Mr. Nuraev I. did not return home. Only on November 2 he was able to call and tell her mother that he was arrested on October 31 and was beaten by the police to extract confessions of a crime that he did not commit. For two days Mr. Nuraev was in one of the rooms of operatives and only when they received from him a confession under torture police issued the arrest report, and provided the right to one phone call. Further investigative actions were conducting with the participation of a lawyer, provided by the relatives of Mr. Nuraev. During the court proceeding on choosing pre-trial measure of restraint against Mr. Nuraev in

Sverdlovsk district court of Bishkek city he told the presiding judge about the torture, but the court did not respond. Even the fact that Mr. Nuraev became sick in the courtroom and he lost consciousness, and was treated by ambulance did not prevent the court to sentence him a measure of restraint in the form of detention.

Annex No. 7 to question No. 36 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

From the response of the head of the State Penitentiary Service under the Government of the Kyrgyz Republic to the request of the Director of the Human Rights Center "Citizens against corruption"(currently named "Bird Duino Kyrgyzstan")[133]:

"Having considered your appeal under the reference number 321, dated February 15, 2013, regarding the issue of weekly visits to a person sentenced to life imprisonment Mr. Azimjan Askarov to provide medical and psychological care we would like to inform you that the convicted person Mr. Askarov since November 13, 2010 to the present is serving his sentence at the Central Hospital in the establishment number 47 of the state penitentiary service. Convicted Mr. Askarov A. gets the full range of medical services that he needs, including counseling by medical specialists conducted from the civil sector of health care system. To date, the condition of the convicted Mr. Askarov A. is satisfactory, has no complaints and is under the constant supervision of doctors of the above mentioned Central Hospital. Based on the foregoing, and in order to maintain a stable environment regime weekly visits to provide medical care to the convicted Mr. Askarov A. are not possible".

From the response of the head of the State Penitentiary Service under the Government of the Kyrgyz Republic to the request of the chairwoman of the board of the Human Rights Movement "Bir Duino Kyrgyzstan":

"Having considered your appeal for permission to provide a psychological assistance to the convicted to life imprisonment Mr. Askarov A., we would like to inform you that at the establishment number 47, where he is detained, he gets treatment of medical specialists of the Central Hospital. In January 2013 the convicted Mr. Askarov A. was examined by doctors of the National Hospital of the Ministry of Health of the Kyrgyz Republic, after which he received a treatment of the hearing care professional and urologist. Currently his state of health is relatively satisfactory, in connection with which the visit to the convicted Mr. Askarov A. we consider as inappropriate".[134]

Annex No. 8 to question No. 38 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

From a letter of the Public Association "Mental Health and Society" to the General Prosecutor's Office of the Kyrgyz Republic:

"Monitoring of the right to protection from torture, carried out in partnership with the OSCE, in

[133] Response from the State Service of Execution of Punishment to Tolekan Ismailova as of 15 February, 2013 #381.
[134] Response from the State Service of Execution of Punishment to Tolekan Ismailova as of 25 March, 2013 #405.

accordance with the Memorandum of Understanding, has caused our grave concern over the situation in Ak- Suu women's psycho-neurological boarding house.
Monitoring was conducted August 5, 2013 together with a representative of Protection of Patients' Rights Ms. S. Kasymbekova, and also a member of Ak -Suu district council Mr. U. Tynaliev. It was found that the conditions of the patients are cruel and inhumane, despite the presence of a large number of flowers and other decorations. The institution grossly violates articles of the Law "On Psychiatric Care and Guarantees of the rights of citizens during psychiatric care". This gives rise to a reasonable suspicion on the continuing practice of concealment of death and its causes; continuing slavery; admission process to boarding school still bypasses legal procedures.

The threat of concealment of death and its causes

First, there is no exact number of residents of the boarding house. Media, based on the press-service of the Ministry of Social Protection, reported that there are 217 people in boarding houses.[135] On August 5, 2013 Director of the Institution reported that there are 220 people in boarding houses, but in fact this number is smaller. Float number of people in boarding house is an ominous sign of a possible concealment of death or the fact that patients are in slavery. We would like to remind that a corpse was found by participants during 2008 budget monitoring in a boarding school.[136] Also, the media reported on slavery in the boarding house, when women were given to work in the fields. Second, the boarding still does not have an independent investigation into the causes of death. The dead persons in an institution are still buried without autopsy. For example, the death certificate of one of the 2 women stated that she died of "heart failure"; however the staff and roommates say that she died of bedsores. In other words the boarding house has all the features to hide the cause of death resulted of poor care. The director of the boarding house takes a decision to waive post-mortem study.[137] Another woman, who is still alive, reported that she had vomited blood, but they did not call the doctor.
It is not known whether the boarding house holds TB control.

Violation of legal procedures of admission and the absence of re-examination

As women are admitted to the boarding house bypassing the established legal procedures.
After examining the personal case files of the inhabitants of the boarding house, the participants of monitoring found no personal statement saying to admit to the psycho-neurological boarding house, which violates the Law "On Psychiatric Care and Guarantees of the rights of citizens during psychiatric care", Article 41 of which provides that a personal statement and the examination by the commission with a psychiatrist is needed to place a person to the psycho-neurological boarding house. Given the fact that the institution is closed, we believe that people illegally detained and held without reason. An annual re-examination of persons in institutions does not take place in order to make a decision on the need for their continued stay in the facility, which violates Article 43 of the Law. Funding for the number of inhabitants motivates to keep people in the institution involuntarily.

[135] Minister Mr. K. Bazarbaev was acquainted with the work of the Ak-Suu female psycho-neurological boarding house. AKI-Press, August 19, 2013.
[136] Express report on the situation of women's psycho-neurological boarding house in the village of Ak-Suu in Issyk-Kul province by the Ministry of Labor and Social Development of the Kyrgyz Republic of August 4, 2008.
[137] Data on mortality of inhabitants at the Ak-Suu female psycho-neurological boarding house for 7 months of 2013. Letter to the Ministry of Social Development of the Kyrgyz Republic of August 5, 2013.

Slavery

Boarding school had previously been indicted in the media to use the disabled as slaves.[138] Survey of inhabitants of the boarding house revealed that more than 15 complained of forced labor, they are forced to work in the fields, also they complained that nurses do not perform their duties, and each of the them are assigned a person in bed and they have to take care of them instead of nurses. It was found from the survey that the refusal to work or any disobedience is severely repressed. Some of the inhabitants told that they are often beaten with sticks as a form of punishment, are locked in a separate room, such as the broken toilet, or, as some say, in the "dark room".
"If they lock in you, you can be locked in for 5 days, one time they made an injection for me, I slept for two days, and after that I was very ill, in addition the director takes our money, pension".

From the survey it was also found that as a form of punishment and threats inhabitants can be send to the Republican Psychiatric Hospital (RPH) in Chym - Korgon village, at the time of monitoring four people were in the RPH, the reason to send them to the hospital that is 400 kilometers away was not clear to us, as in the Law "On psychiatric care. .. "states that mental health care should be chosen closer to the place of residence.
Meanwhile, in the immediate vicinity there is a psycho narcological department at the territorial hospital in Karakol city. But the director Ms. Usenbaeva N sends women to Chym - Korgon village to the hospital - well-known for its brutal conditions of detention. Head of the department in the Karakol hospital confirmed that for the last year and a half women from the boarding house were not transferred to Karakol hospital in case of acute condition or in other words since Ms. Usenbaeva was appointed as a director of the boarding house. This confirms the complaints of the patients that the administration sent patients of the boarding house to Chym -Korgon village in order to frighten and punish.
"The director told us if anyone will complain, they will send them to Chym - Korgon, once there was the Commission and I told them that the matron steals soap, after that she wrapped a soap in a rag and punched me in the face".[139]
Women living in a boarding house are intimidated, avoid the communication and afraid to be punished.
A conversation with the director Ms. Usenbaeva N. about the violation of legal norms has not led to any results, because she stated that "this law does not apply" to her and she works according to "its charter" or on the orders of the Ministry, respectively, she will not perform the specified items of the law until it does not appear in the order and in its charter. She also previously told reporters that she was against "the Convention on the Prevention of Torture".[140]
"As a punishment they do injections, after which we feel bad, that's all, I will not say anything else, I am very afraid, you understand me, and I'm sorry, I'll tell you that and then they will punish me, I do not want it. I have been here for a long time and nothing has changed since then".[141]

It is noteworthy that the director Ms. Usenbaeva N. forbids her inhabitants to use cell phones while

[138] See the article "Obitel Zla (Resident Evil): female psycho-neurological boarding house needs serious reforms" on the site www.vof.kg. 2009.
[139] Survey at psycho-neurological boarding house on August 5, 2013
[140] See the article "Do not let them go" on the site www.vof.kg. August 20, 2008.
[141] Survey at psycho-neurological boarding house on August 5, 2013.

other similar institutions of the same department do not practice such an illegal ban.

We call upon the General Prosecutor's Office to conduct an urgent comprehensive review of the agencies and to give a legal assessment to the activities of the director Ms. N. Usenbaeva. We also would like to point out that the Ministry of Social Development is inactive in the implementation of the Strategy of development of social protection in the reform of boarding houses and did not make any effort on the transition to the new methods of financing that would protect people with disabilities from poor quality services and torture in institutions".

Annex No. 9 to question No. 40 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

From a report on the results of the study "Respect the rights of sex workers in the Kyrgyz Republic" for the year 2012:[142]

68 % of those surveyed sex workers noted that during the whole period of their work in the sex services their rights have been violated at least once. 65 % of sex workers were firmly convinced that the perpetrators were police officers, mainly from the Ministry of the Interior. Moreover they clearly know where a particular offender works (department or service).

Sex workers reported violations such as unexplained rights during detention (49, 9 %), failure to provide an opportunity to inform relatives of their detention (39, 7 %), beatings and torture (37, 2 %), unlawful seizure of passport (17, 2%), rape (10, 2%), and others.

50, 6 % of sex workers have complained about the poor conditions of temporary detention centers, cells at police stations.

Many sex workers consider that making a profit is that the main component of interest to them by law enforcement agencies. Belief that "in all cases meeting the sex worker with a police officer inevitably leads to extortion"[143] is particularly relevant today. 90, 5 % of the respondents explained that there is an informal rate that you have to pay the police. Fee is a voluntary-compulsory. On the one hand, by giving a well-established rate, a sex worker hopes for some protection from the employee received the money, guarantying security. On the other hand, she is forced to pay, because, otherwise, they can close the "place" where she works, or can arrest her, she can be detained in the cell the detention center and even beaten.

10, 2% of sex workers, that is, one in ten of the respondents told interviewers that they had been sexually abused by members of the Department of Interior Affairs.

34, 1 % of sex workers, who talked about a rape, have been group-raped by police officers. Quite common in the sex industry is the so - called "Saturday" during which the sex worker must provide free sexual services in exchange for the restriction of prosecution or in order to avoid arrest. 19, 5 %

[142] Research report of the Public Association "Tais Plus" and the Public Foundation "Independent Human Rights Group", "Respect the rights of sex workers in the Kyrgyz Republic". Bishkek, 2012.
[143] "Violence - under arrest. Violation of the human rights of sex workers in Central and Eastern Europe and Central Asia". The research project involving community SWAN. C.32.

of sex workers, who spoke about the number of rape, said that it happened during the "Saturday".

Some of the respondents talked about the real danger to life if they decide to file a claim for the illegal actions of a police officer. Another reason for the reluctance to seek the protection of the law is no confidence of sex worker in the justice system and fear of retribution by police officers (10, 3 %).

Annex No. 10 to question No. 43 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

The case of Mr. Azimjan Askarov

On June 22, 2010 a lawyer Mr. Toktakunov N. came from Bishkek to meet with human rights activist accused Mr. Askarov kept in the police department of Bazar-Korgon district. The police officers told him that the meeting with his client was not possible without the permission of the prosecutor.[144] The lawyer asked the prosecutor Ms. Turazhanova to allow him to a private meeting with his client, which was guaranteed by the Criminal Procedure Code of the Kyrgyz Republic. Prosecutor Ms. Turazhanova refused and said that "*the Code does not work here*". She also said that a "coordinating council" had decided that the Criminal Procedure Code *"will not be applied"* in the case of Mr. Askarov.[145] We could not get any clarification regarding this "coordinating council", the reasons for its creation, composition and powers.[146]

Annex No. 11 to question No. 43 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

The case of Mr. Azimjan Askarov

On June 17, 2010 human rights defender Mr. Askarov was brought before a judge in the Bazar-Korgon District Court to address the issue of a measure of restraint. In court granted Mr. Askarov a state-appointed lawyer named Syrga whose behavior was incompatible with the interests of justice: he did not receive any instructions from Mr. Askarov, did not explain his rights, did not prepare him for the hearing, made no statements during the court proceedings, and in other words did not take any action to protect his interests. This should have been obvious to the police and to the court. Syrga also did not take any action to check the conditions under which Mr. Askarov was detained; despite the fact Mr. Askarov had bruises on his body and other clear signs of torture. In contrary Syrga accused Mr. Askarov of contempt of the law enforcement authorities and that he had written articles criticizing the police.

Annex No. 12 to question No. 43 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

The case of Mr. Azimjan Askarov

When the human rights defender Mr. Askarov spent eight days in police custody, he was able to meet with a lawyer of his own choice – Mr. N. Toktakunov. However, his access to a lawyer was severely restricted. So, the police refused to grant permission for some of the meetings, at first they

[144] Evidence 6: The statement of Mr. Nurbek Toktakunov, July 12, 2012, § 2-3.

[145] Evidence 6: The statement of Mr. Nurbek Toktakunov, July 12, 2012, § 4. See also evidence 79 Report of the International Commission of Lawyer, claim 58 ("In this case, the criminal procedures do not work").

[146] This council is referred in the Report of the International Commission of Lawyer as the "governing council" (§ 58) and states that a copy of any such decision could not be obtained (footnote 126).

did not allow Mr. Askarov meet and communicate with Mr. Toktakunov in private (the meeting took place in the presence of a police officer Mr. Kiyal Torogulov, who was standing nearby[147]), and then allowed to meet only for a short time, which was not enough to properly prepare a defense.

Annex No. 13 to question No. 47 of the list of issues prepared before presenting the second periodic report of Kyrgyzstan (SAT/C/KGZ/2).

On June 23 and 27, 2009 the country's security forces have carried out a special operation “to destroy the terrorists”, in which they had killed 9 people (according to the official version of the State Committee for National Security). Their bodies were not given to relatives on the basis of Article 36 of the Law “On terrorism”. This operation was carried out in the southern regions of the country - Jalalabatand Uzgen regions. However, the guilt of these people had not been proved by the investigation or the court. The state committed extrajudicial execution in the destruction of these people.

On June 23, 2009 citizens of the Kyrgyz Republic Mr. Satyvaldiev Abdusamat and Mr. Satyvaldiev Abdukarimzhon were shot by security forces. Their bodies were not given to relatives. Their guilt of involvement in terrorism has not been proven either by the investigation or court. Minor children of the victims were deprived of social support.

When deciding special operations to combat terrorism and extremism security forces did not develop a clear plan for the safety of civilians and property of their settlements. For example, on June 27, 2009 in Uzgen district during an operation to destroy the terrorists by the security forces of the country, as a result of the explosion a house of Mamadaliev’s family was burned, that was built over 20 years ago. When the owner of the house Mr. Mamadaliev Muhtarzhon tried to obtain compensation, he was eventually arrested and charged with offenses under four articles of the Criminal Code – “Terrorism”, “Banditry”, “Organization of the armed forces”, “Murder of a law enforcement officer”. A similar charge was brought against Mr. Mamadaliev Abdushukur, the son of Muhtarzhon, and also against Mr. Saliev Tolib and Mr. Tokhtar uulu Zait. According to Mr. Mamadaliev, he was arrested immediately after he tried to claim compensation for the burnt house.

Annex No. 53 to question No. 5 (a) investigation of torture complaints

Investigation of torture facts in the case of Azimjan Askarov

At an appeal of the main editor of a newspaper “Moscovskiy Komsomolets” Ulugbek Babakulov that was published on internet at www.mk.k, describing facts of torture of A.Askarov on 10 January 2011 prosecutor’s office of Jalalabat region (investigator Toitonov T.) refused to initiate a criminal case against police officers that used torture.
Azimjan Askarov’s lawyer Vahitov V.A. appealed the mentioned resolution of the prosecutor’s office with the Jalalabat city court.
On 1 August 2013 under Resolution of the first instance court, it was refused to satisfy the lawyer’s complaint and resolution of the prosecutor’s office was left without changing.
By decision of judges on criminal and administrative issues cases of the Jalalabat regional court, on 27 August 2013 (chief judge Kambarov Sh. K. judges Abdraimov A.J., Isamidinov D.I.) resolution of the Jalalabat city court as of 1 August 2013 was left without changes and the private complaint of

[147] Evidence 6: The statement of Mr. Nurbek Toktakunov, July 12, 2012, § 4 and 6. See also evidence 79 Report of the International Commission of Lawyer, claim 59.

the lawyer was not satisfied.
Arguments of the judicial system bodies are not well-grounded because Article 131 of the Criminal Procedure code does not determine term limitation for an appeal of resolutions of an investigator, prosecutor on refusal to initiate criminal case, on suspension of the criminal case as well as other decisions and actions/inactions that are able to bring harm to constitutional rights and freedoms of participants of the criminal process or could impede citizens' access to justice.

The second instance court states that an investigator on particularly important cases of Jalalabat prosecutor's office T. Toitonov studied all the arguments contained in U. Babakulov's statement, however, the judge did not specify what exact arguments he meant.

Not agreeing with decisions of courts of two instances the lawyer filed a complaint to the Supreme Court of the KR challenging Resolution of the Jalalabat city court dated 1 August 2013 and decision of the Jalalabat regional court as of 27 August 2013 with a request to repeal the decisions and provide appearance of Azimjan Askarov to the court for reviewing his complaint at the Supreme Court.
Supreme Court proceedings are schedule for 16 October 2013.