



**SUBMISSION TO THE UN HUMAN
RIGHTS COMMITTEE ON THE LIST OF
ISSUES FOR THE THIRD EXAMINATION
OF KYRGYZSTAN**

**Spravedlivost Jalal-Abad Human Rights Organization
11 August 2020**



I Authors of the Submission

1. Public Association “Spravedlivost” Jalal-Abad Human Rights Organization (hereafter Spravedlivost) provides the following information to the United Nations (UN) Human Rights Committee ahead of the adoption of a list of issues in advance of the 3rd periodic report of Kyrgyzstan at the Committee’s 130th session in August 2020.
2. Spravedlivost is a non-profit, non-governmental organization based in Jalal-Abad (southern Kyrgyzstan), which aims to promote the rule of law, reinforce and safeguard human rights and combat torture through legal assistance; monitoring places of detention and human rights violations; and conducting advocacy for the reform of policies, laws and practices to conform to international human rights standards. The mission of the organization is the protection of human rights, the establishment of justice and protection against torture.
3. Since the 2010 inter-ethnic violence in southern Kyrgyzstan, Spravedlivost is the only NGO to provide free legal aid to victims of the events in the Jalal-Abad region. The majority of victims belong to minorities, particularly ethnic Uzbeks. The NGO continues to support minorities and to speak out against discrimination in a tense environment where its employees are subject to harassment and intimidation from the authorities for their work. In 2014 Spravedlivost was named the 2014 winner of the Max van der Stoel Award, for its outstanding work in improving the position of national minorities in the OSCE area.

II Scope of the Submission

4. This submission sets out some of Spravedlivost’s key concerns and recommendations related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) by the government of the Kyrgyz Republic. The submission is divided into three principal areas of rights protection:
 - A) Domestic Application and Implementation of the Covenant
 - B) Equality and Non-Discrimination
 - C) Security of the Person and Freedom from Torture, Inhuman or Degrading Treatment or Punishment.
5. The authors are grateful for the opportunity to make this submission and hope that the contents and recommendations are of use to the Committee in their interaction with the state party.

III Principal Concerns and Recommendations

A) Domestic Application and Implementation of the Covenant

6. Under Article 2(2) of the Covenant, state parties are required to adopt those legal and policy measures necessary to give effect to Covenant rights in the domestic legal order. In this regard, the Committee has noted that whilst Article 2 “does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law”, if inconsistencies are identified, domestic law must be amended.¹ The duty to give effect to Covenant guarantees “is unqualified and of immediate effect,” and any alleged violations must be addressed “promptly, thoroughly and effectively” through an impartial and independent body.² In those cases where a human rights violation is identified by the Committee, acting in its capacity under the Optional Protocol to the Covenant, states must “use whatever means lie within their power in order to give effect to the views of the Committee.”³ Where an individual’s human rights have been violated, Article 2(3) of the Covenant requires that reparations – including, but not limited to, compensation – be made to the injured party.⁴

Applicability of the Covenant in Domestic Courts (Article 2)

7. In its Concluding Observations on the second period report of Kyrgyzstan, the Committee noted that international human rights treaties form part of domestic law by virtue of Article 6(3) of the Constitution of the Kyrgyz Republic (the Constitution). However, it regretted the lack of evidence that domestic courts apply the provisions of the Covenant (Art. 2). The Committee recommended the Kyrgyz Republic to take appropriate measures to raise awareness among judges, lawyers and prosecutors about the Covenant and the direct applicability of its provisions in domestic law, so as to ensure that they are taken into account before domestic courts⁵.

Issue Summary

8. On 11 December 2016, a referendum in Kyrgyzstan approved extensive changes to the country’s Constitution, which was first adopted in 2010.⁶ The amendments make fundamental changes to the constitutional order of Kyrgyzstan, and move the Constitution further away from compliance with international law and best practice.
9. Through the amendments approved in the December 2016 referendum, wording of the Article 6(3) of the Constitution has been deleted and replaced with a new wording, which provides that “the procedure and modalities of the application of international treaties and universally

¹ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 1326 May 2004, Para 13.

² *Ibid.*, Paras 14-15.

³ Human Rights Committee, *General Comment No. 33: Obligations of State Parties under the Optional Protocol to the ICCPR*, UN Doc. CCPR/C/GC/33, 25 June 2009, Para 20.

⁴ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13 26 May 2004, Para 16.

⁵ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Paras 5-6

⁶ What’s In Kyrgyzstan’s Constitutional Referendum? <https://www.rferl.org/a/kyrgyzstan-constitutional-referendum-whats-at-stake/28164053.html>

recognized principles and norms of international law shall be defined in the law.”⁷ As a result of this amendment, international treaties no longer apply directly within the domestic legal order but need to be transformed into national law by means of a statute or other source of national law.

10. Since the 2016 amendments to the Constitution it is unclear how ratified treaties, which have entered into force, fit within the hierarchy of the Constitutional legal order and which laws take precedence in the event of inconsistency. Although the Constitutional Chamber of the Supreme Court of Kyrgyz Republic has the power to review treaties submitted to it for consistency with the Constitution⁸, the Constitution provides no guidance on how any incompatibility between an international human rights treaty that is ratified and in force and the Constitution is to be resolved.

Suggested Questions

11. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:
 - *What is the legal status of international human rights treaties over other international treaties and their hierarchical relationship with the Constitution?*
 - *How many cases have been reviewed by the Constitutional Chamber of the Supreme Court of Kyrgyz Republic on inconsistency of the international treaties to the Constitution of Kyrgyz Republic?*
 - *What examples are available of the domestic application of the Covenant by the national courts?*

Implementation of the Views of the Committee (Article 2)

12. Prior to the 2016 Constitutional amendments, Article 41(2) of the Constitution established the obligation of the state to take measures to restore victims’ rights and provide compensation in cases where human rights violations were identified by international human rights bodies. Whilst welcoming this provision, in its 2014 Concluding Observations on Kyrgyzstan, the Committee expressed concern regarding the failure of the state to implement its Views, urging the state to take all necessary measures to ensure the full implementation of Covenant rights⁹. As the result of the 2016 Constitutional amendments, Article 41(2) of the Constitution was deleted, representing a significant retrogression, and weakening of the status of international treaties in Kyrgyzstan.

Issue Summary

13. To date, the Committee has considered 26 individual complaints against Kyrgyzstan, whilst several more have been registered. In over a dozen decisions, the Committee has found a violation the right to freedom from torture under Article 7 of the Covenant, and has recommended the state to take measures of redress and pay compensation to the victim. Yet, despite the fact that the Government regulates the mechanism of intergovernmental consideration of individual complaints and decisions of the UN human rights treaty bodies, no substantive measures have been taken in response to a majority of the Committee’s decisions. Moreover, the legal framework does not provide for the annulment of a court decision or a new

⁷ Article 6 (3) of the Constitution of Kyrgyz Republic

⁸ Article 97 (6) of the Constitution of Kyrgyz Republic

⁹ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 6

trial on the merits following a finding of a human rights violation, resulting in a continued violation of rights. An illustrative example is the case of human rights activist Azimjan Askarov, who died in July 2020 whilst serving a life sentence, over four years after the Committee found a violation of the right to freedom from torture, and urged the Kyrgyz authorities to release him¹⁰.

14. One of the key legal obligations for the implementation of Committee decisions where a violation of the Covenant is identified is the payment of fair compensation to the victim.¹¹ Currently, courts in Kyrgyzstan have considered cases on recovery of moral damages in connection with the cases of *Akmatov Turdubek v. Kyrgyzstan* (No. 2052/2011 dated October 29, 2015), *Mamatkarim Enazarov vs. Kyrgyzstan* (No.2054/2011 dated March 25, 2015) and *Tashkenbay Moidunov v. Kyrgyzstan* (No. 1756/2008 dated July 19, 2011). The compensation awarded by the courts of approximately \$2,500 USD per claim is inadequate in relation to the seriousness of the human rights violations suffered by the victims and thus does not meet the criteria of Article 2(3) of the Covenant. In addition, other types of compensation, such as a public apology and guarantees of non-repetition in the future, are not available under national law to victims of torture.

Suggested Questions

15. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:
- *What practical measures has the state taken to ensure implementation of Committee's views?*
 - *What progress has been made by the state on establishing and implementing a comprehensive national framework for implementation of Committee's views?*

B) Rights to Equality and Non-Discrimination

16. Under Article 2(1) of the Covenant, state parties are required to ensure to all individuals established Covenant rights without distinction on any ground. Article 2(1) is supplemented by Article 26 of the Covenant, which the Committee has interpreted as providing a free-standing right to non-discrimination, which “prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”¹² Recognizing developments in other fields of rights protection led, *inter alia*, through the General Comments of the Committee on Economic, Social and Cultural Rights,¹³ and the Committee on the Rights of Persons with Disabilities,¹⁴ in its recent recommendations to states, the Committee has identified that compliance with the

¹⁰ Azimjan Askarov v. Kyrgyzstan No. 2231/2012, UN Doc. CCPR/C/116/D/2231/2012, 11 May 2016 Para 10.

¹¹ See, for instance, Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 1326 May 2004, Para 16.

¹² Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 1989, Para 12.

¹³ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 37.

¹⁴ Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 6: Equality and Non-Discrimination*, UN Doc. CPRD/C/ GC/6, 2018, Para 22.

right to non-discrimination requires the adoption of a comprehensive legal framework, including comprehensive anti-discrimination legislation.¹⁵

Comprehensive Anti-Discrimination Legislation (Articles 2(1) and 26)

17. In its 2014 Concluding Observations on Kyrgyzstan, the Committee expressed concern regarding a lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as race, language, disability and ethnic origin, and the lack of disciplinary sanctions for State officials acting in a discriminatory manner. Despite the Committee's recommendations, Kyrgyzstan is yet to adopt comprehensive anti-discrimination legislation, in line with its obligations arising under Articles 2(1) and 26 of the Covenant.

Issue Summary

18. The current legal framework of Kyrgyzstan does not provide comprehensive protection from discrimination and the framework as a whole does not sufficiently protect the rights to equality and non-discrimination. Instead of comprehensive anti-discrimination legislation, Kyrgyzstan has adopted specific laws on gender equality, legislation relating to persons with disabilities, legislation relating to persons living with HIV/AIDS, and a number of standalone provisions which either prohibit discrimination or guarantee equal rights in a number of other pieces of legislation regulating specific fields of life. However, these legal acts do not provide specific remedies and access to justice to the victims of discrimination, and there are no recorded cases of discrimination in which victims were provided redress. Moreover, as noted by the UN Special Rapporteur on Minority Issues, Fernand de Varennes, in his 2019 country visit to Kyrgyzstan:

*While anti-discrimination provisions are included in the Criminal Code and the Labour Code, there are no such provisions in other key areas such as education and healthcare amongst others. These lacunae can be of particular significance for minorities who may find themselves subjected to discriminatory treatment or particularly vulnerable or marginalized.*¹⁶

19. Through an assessment of the practice and comments of the UN human rights treaty bodies, several minimum requirements for comprehensive anti-discrimination law may be identified. Accordingly, such law should:
- *define and prohibit direct and indirect discrimination, harassment and failure to make reasonable accommodation,*
 - *on a comprehensive and open-ended list of characteristics, on the basis of perception and association and on the basis of multiple, intersecting characteristics; in respect of all areas of life regulated by law;*
 - *establish the procedural safeguards necessary for the effective functioning of equality law, including provision for the transfer of the burden of proof; and*

¹⁵ See, for instance, Human Rights Committee, *Concluding Observations: Korea*, UN Doc. CCPR/C/KOR/CO/4, 3 December 2015, Paras 12-13.

¹⁶ End of mission statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, Visit to Kyrgyzstan, 6-17 December 2019
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25422&LangID=E>

- *require that states take positive action measures to accelerate progress towards equality for particular groups.*¹⁷

20. Coalition for Equality, a group of Kyrgyzstani civil society organisations working with and on behalf of different groups exposed to discrimination, met with Deputies to discuss a draft anti-discrimination law prepared by the Coalition and strategies for engagement with the government. The draft law is considered as a unique tool that will help to protect the rights of everyone who is discriminated against on a certain basis.

Suggested Questions:

21. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:

- *Does the State intend to enact an anti-discrimination law that comprehensively defines and addresses all forms of direct and indirect discrimination, harassment and failure to make reasonable accommodations?*
- *How many victims of discrimination have been provided redress and remedies?*
- *How many victims of discrimination have benefitted from free legal aid under the Law on State-Guaranteed Legal Aid?*
- *What measures have been adopted by the state to raise awareness among vulnerable groups, including woman, minorities and people with disabilities, of their rights and on the remedies available to them under national legislation?*

Violence Against Women (Articles 2, 3 and 7).

22. In its previous review of Kyrgyzstan, the Committee expressed its concern regarding violence against women, which remained underreported, and was accepted by society at large. The Committee recommended Kyrgyzstan to adopt a comprehensive approach to prevent and address all forms of violence against women, including bride kidnapping, spousal rape and domestic violence, and to guarantee that cases of violence against women are thoroughly investigated; that the perpetrators are brought to justice (and, if convicted, punished with commensurate sanctions); and that victims are adequately compensated.

Issue Summary

23. In Kyrgyzstan, discriminatory gender stereotypes are perpetuated at all levels of society and deter women from reporting human rights violations. While domestic violence and rape are prolific, police and the judiciary systematically fail to properly investigate allegations of abuse and deliver justice. Many complaints are settled by out of court mediation, reconciliation, and/or financial compensation. For example, a video depicting horrific domestic abuse, circulating recently on social media in Kyrgyzstan, shows a man slapping his wife and pouring water over

¹⁷ See, Equal Rights Trust and the Non-Discrimination and Equality Coalition of Armenia, *Submission to the 129th Session of the Human Rights Committee in Relation to the Third Periodic Report of Armenia*, 2020, P. 13 and the sources cited therein, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ARM/INT_CCPR_ICO_ARM_42375_E.pdf.

her head. The case prompted immediate nationwide outrage. The incident took place in the Suzak region on June 8, 2020. The fact was registered in the Unified Register of Crimes and Misdemeanors under Article 75 of the Misdemeanor Code “Family Violence”, but then the case was requalified under Article 144 of the Criminal Code of the Kyrgyz Republic “Torture”. The man was arrested. However, on 02 July 2020 Suzak District Court gave a lighter sentence, two years of probationary supervision and released accused immediately¹⁸.

24. Despite positive steps – such as the criminalization of domestic violence in the 2019 Code of Misdemeanors, and the adoption of a new Family Violence Law in 2017 – gaps in these laws and their implementation leave women at risk. Some provisions of the law lack specificity and survivor protections. For example, the law mandates the police to issue short-term protection orders in all domestic violence cases but does not require a survivor’s consent for such orders.¹⁹ The law does not cover unmarried partners, former partners, and relatives of current or former partners or spouses, regardless of whether the victim and abuser live together²⁰. The misdemeanor code eliminates administrative arrest for domestic violence, instead providing only for fines or “corrective labor”²¹.
25. According to statistics, in Kyrgyzstan one young woman in 17 is abducted against her wishes – a crime popularly known as “ala kachuu” and still seen as an important tradition among some Kyrgyz²². According to the Ombudsman of Kyrgyzstan 50 thousand families are created annually in Kyrgyzstan, of which about 5-7 thousand are created by abduction.²³ Young women, under pressure from their community, often give their unwilling agreement to the arrangement. In 2018, Kyrgyz Internal Ministry figures showed that over the previous five years there had been 895 reports of abduction known to the police, but 727 cases were dropped and only 168 criminal cases were brought to court – an average of 33 abduction cases a year.²⁴
26. According to NGO reports, almost 98% of domestic violence cases that are considered in court concern violence against women perpetrated by men - husbands (68%), sons (17%), fathers (2%)²⁵. In 2019 the number of cases of physical and/or sexual intimate partner violence in the last 12 months increased by 17.1%. Moreover, from January to March 2020 law enforcement agencies of Kyrgyzstan registered 2,319 complaints of domestic violence. According to the Ministry of Internal Affairs of the Kyrgyz Republic this figure is 65 percent higher than for the same period in 2019.²⁶ Official statistics of the Ministry of Internal Affairs shows that there is an annual increase in the number of protection orders issued on the facts of domestic violence. For example in 2019 there were 6,145 protection orders issued, among them, 5752 orders were

¹⁸ Video of Domestic Abuse Sparks Outrage in Kyrgyzstan. <https://www.hrw.org/news/2020/06/16/video-domestic-abuse-sparks-outrage-kyrgyzstan>

¹⁹ Article 27 of the Family Violence Law

²⁰ Article 1 of the Family Violence Law

²¹ Article 43 of the Code of Misdemeanors

²² Как воруют невест в Кыргызстане: цифры и только цифры

<https://ru.sputnik.kg/infographics/20170502/1033180058/kak-voruyut-nevest-v-kyrgyzstane-cifry-i-tolko-cifry.html>

²³ Ala kachuu is a shameful phenomenon for Kyrgyzstan, - Ombudsman <https://ombudsman.kg/>

²⁴ МВД планирует ужесточить наказание за «кыз ала качуу». «Женихам» грозит 10 лет тюрьмы и 200 тыс. сомов штрафа <http://kabar.kg/news/mvd-planiruet-uzhestochit-nakazanie-za-kyz-ala-kachuu-zhenikham-grozit-10-let-tiur-my-i-200-tys-somov-shtrafa/>

²⁵ Alternative Report to the fifth Periodic Report of the Kyrgyz Republic to the Committee on the Elimination of Discrimination against Women (CEDAW), UN Doc. INT_CEDAW_ICO_KGZ_42189_E page 13

²⁶ Domestic violence grows by 65 percent in Kyrgyzstan

https://24.kg/english/150832_Domestic_violence_grows_by_65_percent_in_Kyrgyzstan/

issued for abused women, 393 – for abused men, and 168 – for the protection of minors.²⁷ It is believed that a lack of effective assistance to victims, emergency response to cases of domestic violence, assessment of risks of repeated violence, and effective and adequate punishment of perpetrators has led to a further escalation of domestic violence, contributing to its latency.

Suggested Questions

27. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:

- *What the number of reported cases of sexual and gender-based violence including domestic violence and bride kidnapping, criminal investigations thereof, prosecutions, convictions and the sentences imposed on perpetrators in such cases, as well as on the remedies provided to victims and measures taken to increase the number of investigations, prosecutions and convictions, as well as to increase the remedies provided to victims. Does the State intend to enact an anti-discrimination law that comprehensively defines and addresses all forms of direct and indirect discrimination, harassment and failure to make reasonable accommodations?*
- *How many victims of discrimination have been provided redress and remedies?*
- *How many victims of discrimination have benefitted from free legal aid under the Law on State-Guaranteed Legal Aid?*
- *What measures have been adopted by the state to tackling effectively the persistence of domestic violence and their impact?*
- *What measures have been adopted regarding gender-specific standard operating procedures for law enforcement officers and prosecutors to deal with women and girls?*

Minority Rights (Articles 2(1), 26 and 27)

28. In its 2014 Concluding Observations, the Committee expressed concern about the low level of representation of minorities in political and public institutions, at both the national and local levels. In addition, the Committee was concerned at reports that several schools have changed the language of instruction from the minority language to Kyrgyz, and that some of the Uzbek-language media were closed following the June 2010 events²⁸.

Issue Summary

29. The Constitution of Kyrgyzstan (2010) clearly states that everyone is equal before the law and that everyone is entitled to enjoy human rights and fundamental freedoms without any discrimination, in particular on the basis of their ethnic or religious background.²⁹ Furthermore, the Constitution recognizes the need to complement the principle of equality with the one of equity through the adoption of special measures promoting the rights of minority communities

²⁷ Curbing Domestic Violence in Kyrgyzstan: Are Victims Protected? <https://cabar.asia/en/curbing-domestic-violence-in-kyrgyzstan-are-victims-protected/>

²⁸ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 14

²⁹ Article 16 of the Constitution

to ensure that everyone participates in society on an equal basis with others. However, in reality, national minorities, who make up 26 percent of the population, remain underrepresented in both elected and appointed government positions, particularly Russians and Uzbeks, the two largest ethnic minority groups.

30. The participation of minorities in public life in Kyrgyzstan is extremely limited compared to the proportion of these minorities to the total population of the country. Even though the Government of Kyrgyzstan has acknowledged that the legal framework provides electoral quotas and political representation of the different ethnic groups³⁰, the objectives of the law are not achieved and all quota requirements not fully enforced. In fact, of the 120 members of Parliament, only 10 belonged to a national minority (of which only 3 are of Uzbek ethnic origin). In addition, national minorities are generally underrepresented in government positions or local administrations.
31. A particularly acute problem is the low rate of representation of ethnic minorities in law enforcement bodies in the southern part of Kyrgyzstan. Since 2014 the situation has not improved. In fact, representation of ethnic Uzbeks in public life has deteriorated dramatically since June 2010. For example, law enforcement forces and courts very rarely employ ethnic Uzbeks. In fact, there is no Uzbek judge in the southern part of country, despite a large ethnic Uzbek population. The absence of programs to promote the recruitment of national minorities affects their representation in different public bodies, including law enforcement.
32. According to the United Nations Special Rapporteur on minority issues the “disproportionate presence of minorities, or more accurately the near exclusion of minorities, has been linked in part to a language barrier as one of the main reasons explaining the low representation of minorities in public life”³¹. Despite some measures taken by the government, changes in language policy over the last year suggest that the implementation of the Committee’s recommendations on education and minority language rights has failed. For instance, the number of Ethnic Uzbek students going to university or colleges has decreased dramatically since 2014 due to a government decision to cancel high school examinations in their mother tongue³². Currently, high school examinations are given only in Kyrgyz and Russian.
33. There are no special preparatory courses for students from Uzbek schools and they are not given enough time to prepare for tests in either Kyrgyz or Russian. The denial of education in the Uzbek language is a clear example of indirect discrimination with regard to minority children who are educated partially in minority languages and who do not have proficiency to be tested in Kyrgyz. In other words, Uzbek students disproportionately and unreasonably excluded from access to higher education, this is considered discrimination³³. As a consequence of this discrimination, for the last five years many Uzbeks students have lost access to higher education.

³⁰ The Government of Kyrgyzstan wrote the following in its eighth to tenth periodic: Kyrgyzstan is the only country in the region to have established in law quotas for the representation of the different ethnic groups in its highest elected democratic governance body, the Zhogorku Kenesh (parliament). This was one of the urgent measures taken to increase participation by the different ethnic groups in political and public affairs, as recommended in the concluding observations. UN Doc. CERD/C/KGZ/8-10, para 17

³¹ End of mission statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, Visit to Kyrgyzstan, 6-17 December 2019
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25422&LangID=E>

³² Kyrgyzstan Ends Uzbek-Language University Entrance Exams <https://24.kg/archive/en/bigtiraj/170455-news24.html/>

³³ "Language Rights of Linguistic Minorities: A Practical Guide for Implementation. Handbook by the United Nations Special Rapporteur on minority issues page 13
<https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx>

In addition, the government has adopted a policy of gradually converting Uzbek schools into schools with Russian or Kyrgyz as the language of instruction. According to the State Statistics Committee, the number of Uzbek schools for grades 1 through 11 fell from 141 in 2002 to 43 in 2018.³⁴ According to the UN Special Rapporteur on minority issues: “longitudinal data covering the school years from 2013/14 to 2017/18, show a dramatic decrease in the number of Uzbek schools (from 65 to 33), whereas the number of Russian schools has increased and the Tajik remains the same throughout the reported period. It is noteworthy that despite being the second largest community in the country, and more numerous than members of the Russian minority, the use of the Uzbek language in education is significantly underrepresented.”³⁵

34. Although Article 10 of the Constitution recognizes that ethnic minorities form part of the population of Kyrgyzstan, and provides for the right to preserve their native language as well as for the creation of conditions for its learning and development, in practice minorities appear to face significant challenges in accessing quality education in their mother tongue. The state Kyrgyz and official Russian languages have progressively replaced minority languages in public education (there no vocational or university-level courses available in a minority language other than in a few courses limited to the study of non-Russian minority languages). Before the violence in 2010, there had been two Kyrgyz universities which offered courses in Uzbek, namely the Kyrgyz-Uzbek University in Osh and the People’s Friendship University in Jalal-Abad. This situation prevents Uzbek youth admission to universities and access to the labour market on equal footing with members of the majority. The use of minority languages is primarily limited to home life and to low-level service-oriented careers. Ethnic Uzbeks struggle to find well-paying jobs and are underrepresented in certain sectors of the workforce, especially at the governmental level.
35. Following the June 2010 ethnic conflict, the Uzbek Ethnic-Cultural Center became inactive and ceased its activities in the region. The organization, whose mission serves to promote the cultural heritage of Uzbeks, lost popularity due to tensions stemming from the 2010 events in Osh and Jalal-Abad, which have contributed towards a climate of discrimination, racial stereotypes, and widespread nationalistic discourse, alongside increased suspicion between the majority and minority ethnic groups.

Suggested questions:

36. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:
 - What kind of practical measures have been taken to ensure representation of minorities in political and public bodies at all levels, including the judiciary and law enforcement?
 - What steps have been taken to facilitate education in minority languages for children belonging to minority ethnic groups and promote the use of minority languages in the media?

³⁴ https://24.kg/obschestvo/77108_tolko_216_shkol_vkyrgyzstane_srusskim_yazykom_obucheniya/

³⁵ End of mission statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, Visit to Kyrgyzstan, 6-17 December 2019
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25422&LangID=E>

- What practical measures have been taken to combat discrimination and prejudice against minorities and to address the reported rise in hate crime and hate speech towards them and the insufficient prosecution of such acts?
- Does the state provide appropriate and proportionate resources and support for schools teaching in minority languages in order to achieve inclusive and equitable quality education, including funding for minority language textbooks?
- What measures have been taken to develop and finance programmes for the development and training of minority language teachers in schools and universities and promote such programmes among minority communities?
- Does the state adopt an alternative mechanism or any higher education admission test are introduced for minority students who have mainly received instruction in their own languages in public schools in order not to exclude them unreasonably from accessing higher education?

C) Security of the Person and Freedom from Torture, Inhuman or Degrading Treatment or Punishment.

Under Article 7 of the Covenant no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Inter-Ethnic Violence (Accountability for Past Human Rights Violations and the Right to an Effective Remedy) (Articles 2, 7, 9, 14, 26 and 27)

37. In its 2014 Concluding Observations, the Committee expressed concern about reports concerning failures on the part of the State party to investigate fully, effectively and without discrimination, human rights violations committed during and in the aftermath of the June 2010 ethnic conflict in the south of Kyrgyzstan, including allegations of torture and ill-treatment, serious breaches of fair trial standards during court proceedings, including attacks on lawyers defending ethnic Uzbeks, and discrimination in access to justice based on ethnicity³⁶.

Issue Summary

38. Since the last review by the Committee, the Kyrgyz authorities have demonstrated an unwillingness or inability to investigate allegations of human rights violations fairly and effectively against ethnic minorities during the June 2010 events. Crimes against Uzbeks, including torture, rape and murder, have been left unpunished. The Kyrgyz authorities have failed to investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status and prosecute and punish those responsible, including police or security forces.
39. According to Amnesty International, investigators and prosecutors have failed to investigate and prosecute the vast majority of crimes committed against ethnic Uzbeks during and since the June

³⁶ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 14

2010 violence, including crimes against humanity committed in Osh in June 2010. In at least 200 documented cases of murders of ethnic Uzbeks during the June violence, either no criminal investigation was opened, or the proceedings were suspended. However, many relatives were reluctant to follow up on the murders for fear of reprisals.³⁷

40. Recently, the UN Special Rapporteur on minority issues, Fernand de Varennes, during his country visit to Kyrgyzstan expressed concern over the Government's response with regard to the investigation and the administration of justice for the serious violations committed during June 2010. Reports indicate that a significant number of criminal cases for murder as well as for destruction of property and robbery or theft remain suspended, and that the Government has not implemented programmes for the rehabilitation of victims and their families, including children who have been exposed to violence and destruction.³⁸
41. Spravedlivost has documented dozens of cases where Kyrgyz law enforcement officers have targeted Uzbeks, threatening to charge them with serious criminal offences, such as murder and violent mass disturbances, in relation to the June 2010 events in order to extort money from them. In our experience, victims are reluctant to follow-up for fear of reprisals. An example is the case of Usmanzhan Khalmirzaev, an ethnic Uzbek Russian citizen, who died on 9 August 2011, reportedly as a result of torture, two days after he was arbitrarily detained in the village of Bazar-Korgon by plain-clothes police officers and taken to the local police station. He told his wife a gas mask had been put over his face and he had been beaten. When he collapsed, one of the officers reportedly kned him in the chest two or three times until he lost consciousness. The police threatened that if he did not pay them US\$6,000, they would charge him with violent crimes in relation to the June 2010 violence. He was eventually released four hours later after his family gave the officers US\$680. He was hospitalized the next morning and died of his injuries a day later. His wife said that he had told her that the officers were responsible for his injuries. His wife and her lawyer, who were present at his autopsy, reported that the forensic examination found that he had died of internal haemorrhaging. The prosecutor of Jalal-Abad opened a criminal case against four police officers with several charges, including torture³⁹. The case went to trial. In 2015 all defendants were fully acquitted.
42. In 2017 Atamirzaev Latipzhon, an ethnic Uzbek resident of Suzak village was sentenced to life imprisoned by Suzak District Court for charges in relation to the June 2010 violence. The case of another resident of Suzak village, Usmanov Shuxrat, ethnic Uzbek is currently before Suzak District Court concerning the same charges. Spravedlivost is concerned that ethnic Uzbeks are disproportionately charged and brought to trial in relation to the 2010 events, when compared to members of the ethnic Kyrgyz population, contrary to the right to the effective protection and equal treatment of the law, *inter alia* established under Articles 2(1), 14, and 26 of the Covenant.
43. Instead of initiating or setting up a mechanism to review all cases of persons convicted in connection with the June 2010 events, Kyrgyzstan has issued dozens of extradition requests for ethnic Uzbeks whom the authorities accuse of having organized or participated in the June 2010

³⁷ Kyrgyzstan: Still waiting for Justice: one year on from the violence in southern Kyrgyzstan

³⁸ End of mission statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, Visit to Kyrgyzstan, 6-17 December 2019

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25422&LangID=E>

³⁹ Five years on: justice still denied. Amnesty International public statement. 2015 index: EUR 58/1846/2015
<https://www.amnesty.org/download/Documents/EUR5818462015ENGLISH.pdf>

conflict. Most of the persons subject to such extradition requests have fled to Russia. The European Court of Human Rights has held in several extradition cases against Russia, that, if the applicants, ethnic Uzbeks of Kyrgyzstani nationality, were to be extradited to Kyrgyzstan there would be a violation of Article 3 of the European Convention on Human Rights (the prohibition of torture or other ill-treatment) which extends to sending people to places where they would face a real risk of ill-treatment. These decisions clearly demonstrate the risk of torture and other ill-treatment for ethnic Uzbeks threatened with return to Kyrgyzstan.⁴⁰

Suggested Questions

44. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:

- *What are the status of proceedings related to the June 2010 events crimes?*
- *To what ethnical groups belong all persons who were life-imprisoned in connection with the June 2010 events?*
- *What kind of measures have been taken to initiate or set up mechanisms to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial?*

Torture and Ill-Treatment (Article 7)

45. In its 2014 Concluding Observations on Kyrgyzstan, the Committee expressed its concern about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty for the purpose of extracting confessions, particularly in police custody and the State party's failure to conduct prompt, impartial and full investigations into deaths in custody; and the lack of prosecution and punishment of perpetrators of torture and ill-treatment and compensation of victims. The Committee also remains concerned about allegations of torture and miscarriages of justice in the case of Azimjan Askarov (Articles 6, 7 and 10)⁴¹.

Issue Summary

46. In 2003, torture was criminalized in domestic legislation⁴². As part of measures to improve justice in the Kyrgyz Republic, from 1 January 2019, new Criminal and Criminal Procedure Codes were enacted, which strengthen the basic guarantees of freedom from torture during detention and increase the punishment for torture.⁴³ In recent years the Government of the Kyrgyz Republic has committed "to change the situation for the better in the fight against torture"⁴⁴. Despite this, the practice of torture by law enforcement continues to occur with impunity. This is evidenced by results of the 2019 Index of assessment of torture and ill-treatment of persons detained in remand prisons (SIZOs) and temporary detention facilities (IVSs), according which

⁴⁰ Mamadaliyev v. Russia (Application no. 5614/13); R v. Russia (Application no. 11916/15) Gayratbek Saliyev v. Russia (Application no. 39093/13); Turgunov v. Russia (Application no. 15590/14) Kodirjonov and Mamashev (Application no. 42351/13 and 47823/13).

⁴¹ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 15

⁴² Article 305-1 of the Criminal Code of Kyrgyz Republic (1999)

⁴³ Law of Kyrgyz Republic dated 24 January 2017 No. 10 "On the Implementation of the Criminal Code, the Code of Misconduct, the Criminal Procedure Code, the Criminal Executive Code and the Law "On General Principles of Amnesty".

⁴⁴ Security Council: The State and Society should jointly eradicate torture.

https://kaktus.media/doc/382438_sovbez:_gosydarstvo_i_obshestvo_vmeste_doljny_iskoreniat_pytki.html

30 per cent respondents stated that they had been subjected to unjustified physical force or torture by law enforcement bodies⁴⁵. Deaths of people in IVS custody at the Ministry of Internal Affairs (including for administrative detention) and of the Armed Forces give cause for serious concern.

47. Impunity for torture and ill-treatment in Kyrgyzstan is exacerbated by the lack of effective complaint mechanisms, independent investigations, monitoring and other protective measures. The absence of swift, impartial and full investigations into allegations of torture and ill-treatment means that such criminal acts often go unpunished. Official statistics from the General Prosecutor's Office show that in nine out of ten cases a decision is taken to refuse to initiate a criminal case into an allegation of torture or ill-treatment. According to official statistics only a few perpetrators have been convicted and imprisoned for torture since torture acts were criminalized in 2003.
48. Currently, all allegations of torture are considered confidentially by the State Committee for National Security (GKNB). Research shows that the GKNB has a shortage of trained personnel with specialist knowledge and experience in the field of investigating torture allegations. In addition, the State Committee for National Security is a multi-purpose agency, possessing both the powers of law enforcement agencies and the functions of special secret services. Therefore, conflicts of interest inevitably arise when conducting inspections and investigating allegations of torture and ill-treatment by law enforcement agencies.
49. The principle of independence and effectiveness also means that the findings of the investigation cannot be based only on the testimony and explanations of the officers accused of the abuses. However, most sentences in criminal cases are based primarily on confessions given during the investigation, a practice that is often encouraged by courts who overly rely on confessions when evaluating evidence. If, during the trial, the defendant claims that the confession was obtained under torture, in Spravedlivost's experience the courts usually tend to ignore such statements or carry out a superficial investigation through questioning the police officers in court. Such ingrained court practice makes it difficult to combat torture and impunity.
50. Spravedlivost would like to highlight that current legislation does not provide effective procedures and mechanisms to ensure independent investigations of torture and other alleged misconduct. The lack of comprehensive, effective, prompt and impartial investigatory mechanisms remains the main obstacle faced by torture victims in accessing justice.
51. Spravedlivost has documented cases where investigations have been delayed by several years and torture victims are not provided access to justice. An example is the case of Nurubekov Abjal, a resident of Totogul District, who was reportedly subjected to torture and ill-treatment for the purposes of obtaining testimony (a confession) relating to the sale of narcotic drugs. The case was officially registered in April 2019. Despite enough evidence establishing a prima facie case of torture and ill-treatment, including medical protocols, which show repeated beatings by police during detention, the case remains unresolved. A similar case is that of Davlatov Almazbek, who was subjected to torture in December 2018 in order to obtain a testimony (confession) on a charge of theft. Currently, both cases remain under investigation by the

⁴⁵ Report on the Index of torture in detention facilities in the Kyrgyz Republic / Joint Report of the Coalition against Torture and the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Bishkek, 2018 // <https://notorture.kg/publication/publikacii-koalicii.html>

Investigation Department of Jalal-Abad Regional Branch of the State Committee for National Security, without significant progress.

52. In June 2012, Kyrgyzstan established a National Preventive Mechanism (NPM) for the prevention of torture. Over the past five years, 46 incidents of obstruction of NPM activities were recorded and 3 criminal proceedings were initiated regarding these incidents. Currently, the prohibition of interfering and obstructing the activities of the National Center's staff and members of the Coordination Council has been excluded from the new Criminal Code and the Code of Misconduct. Accordingly, there is no criminal or other forms of liability for such actions, except for that provided for in the Code of Violations. However, this Code does not precisely prohibit interfering and obstructing the activities of the National Center. More broadly, it relates to the obstruction and interference of the activities of a state body, for which a small fine may be imposed.

Suggested Questions

53. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:
- *What kind of specific measures have been taken by the state to address the reported delays in investigating and prosecuting torture allegations?*
 - *What steps have been taken to ensure that relevant medical professionals are systematically provided with thorough and practical training in the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?*
 - *What kind of redress and compensation measures have been ordered by the courts since the consideration of the last periodic report which includes the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case.*
 - *What kind of rehabilitation programmes are provided to victims and whether they include medical and psychological assistance?*

Liberty and Security of Person and Conditions of Detention (Articles 9, 10 and 14)

54. In its 2014 Concluding Observations, the Committee expressed its concern about the lack of implementation of basic procedural safeguards to all persons deprived of their liberty and harsh conditions in places of deprivation of liberty, including overcrowding, lack of hygiene and insufficient food and drinking water.⁴⁶

Issue Summary

55. Kyrgyzstan has not implemented international standards for conditions in detention facilities. In prisons and detention facilities in Kyrgyzstan detainees and prisoners experience extremely poor food and a lack of basic sanitary facilities and heating. The Special Rapporteur on Torture,

⁴⁶ Concluding observations on the second periodic report of Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 17

Juan Mendez in 2011, equated the conditions of Kyrgyzstan's detention facilities to torture or inhumane treatment and punishment⁴⁷.

56. The Law of the Kyrgyz Republic "On the Procedure of Detention" stipulates that individuals suspected of a crime must be provided with living conditions that meet the requirements of hygiene, sanitation and fire safety, be provided with an individual sleeping place, and be provided with bedding, dishes and cutlery. The Law also stipulates that all cells must be provided with radio broadcasting equipment and, if possible, with televisions, refrigerators and ventilation equipment. The norm of the living area in the cell for one person, according to the Law, is 3.25 sq. m.
57. The annual reports for 2014, 2015, 2016, 2017 and 2018, 014 of the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the report of the OSCE Center project "Countering Torture in Kyrgyzstan through National Human Rights Mechanisms" clearly show that the conditions of most of detention facilities all over the country do not meet national standards. For example, there has never been a pre-trial detention center in the Jalal-Abad region with 1, 200 000 people. The detainees whose cases under investigation or before court consideration languished for years in temporary detention facilities, which, according to the law, cannot be kept for more than 48 hours. And there are no proper conditions corresponding even to the temporary detention facilities itself⁴⁸.

Suggested Questions:

58. Spravedlivost urges the committee to address the following questions to Kyrgyzstan:
 - What remedial measures has the state put in place pending the provision of in-cell sanitation for all prisoners?
 - Has the state adopted any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subjected to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report?
 - What measures have been taken to reduce the number of cases of excessively long duration of detention and indicate the maximum duration of detention during the period under investigation?
 - What the number of persons in detention in Kyrgyz prisons, the numbers per prison and the rates of overcrowding (number of prisoners against the design capacity of each prison and individual cells) and what interim, medium and long-term actions are being taken to remedy this situation?
 - What mechanisms has the state introduced to implement recommendations made by the National Center of the Kyrgyz Republic for the Prevention of Torture (NPM)?

⁴⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Kyrgyzstan UN doc. A/HRC/19/61/Add.2 21 February 2012

⁴⁸ СИЗО в Жалал-Абаде: ждём роста преступности среди женщин? <https://spravedlivostkg.org/sizo-v-zhalal-abade-zhdyom-rosta-prestupnosti-sredi-zhenshhin/>