COALITION AGAINST TORTURE IN KYRGYZSTAN

HUMAN RIGHTS COMMITTEE, 130 SESSION
NGO REPORT FOR FORMATION
LIST OF ISSUES IN CONNECTION WITH THE CONSIDERATION OF THE THIRD PERIODIC REPORT OF KYRGYZSTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (CCPR/C/KGZ/3)

The list of issues in connection with the consideration of Kyrgyzstan's third periodic report on the implementation of the International Covenant on Civil and Political Rights was prepared by the Coalition against Torture in Kyrgyzstan (www.norture.kg) based on information received during the analysis, monitoring and documentation of torture and ill-treatment. The document includes separate thematic sections with a list of issues proposed to the State.

The coordination of the list of issues was carried out by the Legal Prosperity Foundation (Bishkek).

CONTENTS:

1. IMPLEMENTATION OF THE RIGHTS RECOGNIZED IN THE COVENANT (ART. 2)

1.1. Implementation of the Covenant

In its concluding observations (para. 3 (b)), the Committee welcomed the adoption of the 27 June 2010 Constitution, which contains provisions on the implementation of the recommendations of international bodies of human rights (art. 41 Part 2).

On December 28, 2016, ex-president Almazbek Atambayev signed the law "On Amending the Constitution of the Kyrgyz Republic," according to which this provision was deleted from the text of the Constitution, as well as the provisions on the direct operation of international human rights treaties and their priority over the norms of other international treaties (article 6 part 3).

Following these amendments to the Constitution, on the initiative of the Government, on June 25, 2020, the Jogorku Kenesh of the Kyrgyz Republic adopted a law amending the Code of Criminal Procedure, namely the deletion of paragraph 3 of part 4 of article 442 and paragraph 3 of part 4 of article 444 of the Code, consequently, the decision of the international human rights body, including the Committee's Views, will no longer be considered grounds for reopening the case and reviewing the case as a measure to achieve restitutio in intergrum. The law will enter into force after signing by President Sooronbay Jeenbekov.

Human rights defenders in Kyrgyzstan are deeply concerned about these consistent regressive legislative changes, as they point to the attempt by the authorities to circumvent their human rights obligations.

Questions:

1) *Please explain how the amendments to article 6, part 3, and article 41, part 2 of the Constitution are consistent with the provisions of the Covenant?*
2) *What are the motives for the Government of the Kyrgyz Republic to initiate amendments to the Code of Criminal Procedure in the form of an exception to the provisions of paragraph 3 of part 4 of article 442 and paragraph 3 of part 4 of article 444 of the Code of Criminal Procedure?*
3) *Please explain how the changes in the Code of Criminal Procedure in excluding the provisions of article 442, part 4, paragraph 3, and article 444, part 4, paragraph 3, are consistent with the obligations under article 2 of the Covenant and the Optional Protocol?*

1.2. Applicability of the Covenant in national courts

In accordance with article 6, part 3 of the Constitution, which has entered into force in accordance with the procedure established by law, international treaties to which the Kyrgyz Republic is a party are an integral part of the legal system. Despite this, judges are rarely guided by the Covenant in their cases.

According to the periodic report (para. 11), since the consideration of the previous report in March 2014, only 5 decisions of the Supreme Court and the Constitutional Chamber of the Supreme Court have been guided by the Covenant. It follows that local court judges are not guided by the Covenant in their decisions.

Questions:

1) *Please explain whether the fact that judges of local courts are not guided by the Covenant is related to the fact that they are not included in judicial awareness-raising programmes on the provisions of the Covenant and the direct applicability of its provisions, or are there any other reasons?*
2) *Please provide statistical data for the period since the consideration of the previous report in March 2014 on the number of judges in the Supreme Court and local courts who have been trained in the programme to raise judges' awareness of the provisions of the Covenant and the direct applicability of its provisions.*

1.3. Implementation of the Committee's Views

The Committee had made 27 Views concerning Kyrgyzstan, about recognized violation of the Covenant. None of the Committee's Views had been published to inform the public.

Despite the fact that in 2013 the Coordinating Council for Human Rights was created under the Government of the Kyrgyz Republic, and in 2017 the Government approved the provision "On issues of interaction between state bodies for the consideration of communications and decisions of the UN human rights treaty bodies," it was not possible to use an effective mechanism for the implementation of views in the country.

The Coalition against Torture was concerned that the Committee's Views had not been implemented. There is no official information on measures taken by Kyrgyzstan to implement the Committee's Views.

Questions:

1) *Please provide detailed information about specific measures which have been taken to provide remedies, including compensation without repeating violations of the rights established in the Committee's Views, including in communications: (1) Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev, Rasulzhon Pirmatov (CCPR/C/93/D/1461,1462,1476, 1477/2006); 2) Soyuzbek Kaldarov (CCPR/C/98/D/1338/2005); 3) Krasnova Tatyana in the interests of Krasnov's son Mikhail (CCPR/C/101/D/1402/2005); 4) Otabek Akhadova (CCPR/C/101/D/1503/2006);*

5) Ahmet Gunan (CCPR/C/102/D/1545/2007); 6) Munarbeka Torobekova (CCPR/C/103/D/1547/2007); 7) Turdukan Dzhumabaeva in the interests of the deceased son Tashkenbay Moidunov (CCPR/C/102/D/1756/2008); 8) Mamatkarim Ernazarov on behalf of the deceased brother Ernazarov Rahmonberdi (CCPR/C/113/D/2054/2011); 9) Suyunbaya Akmatov, in the interests of his deceased son Turdubek Akmatov (CCPR/C/115/D/2052/2011); 10) Zhakhangira Bazarova (CCPR/C/118/D/2187/2012); 11) Urmatbek Akunova (), 12) Azimjan Askarov (CCPR/C/116/D/2231/2012); 13) Alimjon Saidarov, Avaz Davudov, Erkin Vasilov and Hikmatillo Erbabaev (CCPR/C/119/D/2359/2014); 14) Fakhridina Ashirov (CCPR/C/120/D/2435/2014); 15) Arsen Ambaryan in the interests of brother Arthur Ambaryan (CCPR/C/120/D/2162/2012); 16) Marata Abdieva (CCPR/C/124/D/2892/2016).

2) *How does the Government inform the public about the Committee's Views and the measures taken for their implementation?*

1.4. Independent National Human Rights Institution

In its concluding observations, the Committee recommended Kyrgyzstan to bring immediately the mandate of the Ombudsman (Akyikatchy) into full compliance with the Paris Principles and provide him with the necessary financial and human resources to enable him to carry out his mandate effectively and independently (para. 7).

In 2012, the Ombudsman (Akyikatchy) of the Kyrgyz Republic was accredited by the Subcommittee on Accreditation of the International Coordinating Committee of National Human Rights Institutions in "B" status, meaning that its status is not in full accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). At the same time, recommendations were made to improve the legislation of the Kyrgyz Republic governing its activities.

One of the significant gaps is article 7 of the Ombudsman (Akyikatchy) Act, which regulates the early termination of the powers of the Ombudsman (Akyikatchy). According to this rule, the Ombudsman (Akyikatchy) may be prematurely dismissed if his report is disapproved by the Jogorku Kenesh. Thus, the rule includes the potential risks of parliamentarians influencing the publicity of information about human rights violators and the objectivity of the report. This rule creates a certain degree of dependence of the Ombudsman (Akyikatchy) on political forces and prevents the Ombudsman from effectively performing the function of protecting human rights.

The draft law "On Akyikatchy (Ombudsman) of the Kyrgyz Republic," developed in accordance with the recommendations of the Subcommittee on Accreditation, as noted in the periodic report (para. 33), is under consideration by the national parliament. In accordance with the Regulations of the Jogorku Kenesh for the adoption of the bill by parliament, it must pass three readings.

The Coalition against Torture expresses concern that the required bill was adopted on first reading on April 20, 2017, and for more than 3 years the draft law has been in parliament without any movement.

Questions:

1) *Please explain whether there are any significant objective reasons that for more than three years have prevented the adoption of the draft law "On Akyikatchi (Ombudsman of the Kyrgyz Republic" by the Kyrgyz Parliament in the second and third reading?*
2) *Specify when the law "On Akyikatchi (Ombudsman of the Kyrgyz Republic" will be adopted?*
3) *Please provide information on all measures other than the drafting of a new law that have been taken since the consideration of the previous report in March 2014 to bring the Institution of the Ombudsman (Akykatchy) as a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).*

1.5. Dissemination of information on the Covenant

In its concluding recommendations, the Committee drew the Government's attention to the need to ensure the wide dissemination of the Covenant, the two Optional Protocols to the Covenant, the text of its second periodic report, the written replies to the Committee's list of issues and concluding observations among judicial, legislative and administrative officials, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also recommends that the report and concluding observations be translated into another official language of the State party (para. 28).

Questions:

1) *How does the Government ensure that the Covenant, the two Optional Protocols to the Covenant are disseminated among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as among the general public?*
2) *Has the text of the second periodic report, the written replies to the Committee's list of issues and concluding observations been circulated among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as among the general public?*
3) *Please provide information on plans to improve experiences and practices that should facilitate the effective dissemination of the third periodic report and its concluding observations?*

1.6. Consultations in the preparation of the periodic report

In its concluding recommendations, the Committee requested extensive consultation with civil society and non-governmental organizations in the preparation of the third periodic report (para. 30).

Questions:

1) *Please provide information on the frequency and format of consultations and discussions held with civil society and non-governmental organizations in the preparation of the Third periodic report.*
2) *What specific comments and suggestions were received during the consultations from representatives of civil society and non-governmental organizations? Please provide the Government's arguments for their adoption and inclusion in the preparation of the periodic report, or its rejection.*

2. PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT AND COMBATING IMPUNITY (ARTS. 2, 6 AND 7)

2.1. Practice of torture for the purpose of obtaining a confession

In its concluding observations, the Committee expressed concern at the persistence and widespread practice of torture and ill-treatment of persons deprived of their freedom in order to obtain confessions from them (para. 15).

According to National Centre for the Prevention of Torture, nine out of 10 (more than 90%) cases of torture are committed by police officers against suspects and accused persons in order to solve a crime by obtaining their confessions. Thus, since the consideration of the previous report in March 2014, the situation regarding the purpose of torture has not changed.

The disclosure race, which requires the employee, who is responsible for solving crimes to achieve a higher percentage of detection compared to the same period of the previous year, is important for him, since his departmental well-being and career development depend on this. It happens because the disclosure of crimes is the most important criterion for assessing the operational performance of the Department of Internal Affairs, and each employee must and will try to contribute to improving the assessment of the activity of the Department of Internal Affairs in which he works.

Statements, made by the leadership of the Ministry of Internal Affairs that the department refused to use this evaluation criterion are baseless, since according to paragraph 10, subparagraph 4, the provision "On the basics of a comprehensive assessment of the activities of the internal affairs bodies of the Kyrgyz Republic," approved by a decision of the Government of the Kyrgyz Republic of February 24, 2015, the detection of crimes is still the current criterion for assessing the operational and official activities of the internal affairs department.

Question:

1) *Please provide information on efforts to reform the police force, including in improving the criteria for assessing the performance of the police force, in order to exclude any criteria that encourage officers to focus on the percentage of disclosure and develop a zero-tolerance policy on torture and ill-treatment by police officers.*

2.2. Definition of torture

The definition of torture in article 143 of the Criminal Code of the Kyrgyz Republic corresponds to the definition of torture set out in article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the punishment provided for torture is commensurate with the gravity of this crime.

However, this definition limits the criminal liability for torture to officials only and does not criminalize the torture of other "persons acting in an official capacity." The inadequacy of the subject of the crime avoids liability for the use of torture by a large number of potential torturers.

The UN Special Reporter on Torture, in his report on his mission to Kyrgyzstan (A/HRC/19/61/Add.2, para. 80) and the UN Committee against Torture, in the concluding observations on the second periodic report of the state (CAT/C/KGZ/CO/2, para. 10), recommended that Kyrgyzstan amend article "torture" of the Criminal Code so that the definition of torture complies with the definition contained in article 1 of the Convention against Torture, but the recommendations are not implemented.

Questions:

1) *Please clarify whether there are any objective reasons that prevent the definition of "torture" in the Criminal Code of the Kyrgyz Republic from being brought into full conformity with article 1 of the UN Convention against Torture and the addition of the subject of the crime of "torture by persons acting in an official capacity?*
2) *Was there any other question of supplementing the scope of persons subject to criminal liability for the use of torture by persons acting in an official capacity the subject of discussion when drafting and adopting a new Criminal Code of the Kyrgyz Republic, which entered into force on January 1, 2019? Give the arguments that were decisive for the decision of parliament not to expand the subject of the crime.*

2.3. Effective and independent investigation of torture and ill-treatment

In its concluding observations, the Committee recommended that Kyrgyzstan immediately intensify its efforts to take measures to ensure prompt and impartial investigation of complaints of torture or ill-treatment (para. 15).

It is a matter of concern that since the consideration of the previous report in March 2014, effective measures have not been taken by the State, and the practice of promptly, impartially and fully investigating allegations of torture and ill-treatment has not developed.

The complete devolution of powers to investigate torture cases from prosecutors to SNSC investigators under the new Code of Criminal Procedure has significantly reduced the effectiveness of the investigation. The reasons for the decrease in efficiency are explained by the lack of specially trained personnel in the investigative units of the State Security Committee with special knowledge and experience in investigating torture, which have been developed by investigators of the prosecutor's office for years.

Lawyers defending the interests of victims of torture complain that investigators do not take appropriate and timely measures to fully verify the circumstances of the alleged torture and identify those involved in the commission of the crime, promptly appoint forensic examinations, ignore requests for interrogation of the victim of torture and recognize him\her as a victim (for example, a criminal case on the fact of torture against Rajapova Nargiza), on conducting face-to-face betting with alleged torturers, etc. Instead, investigators rely mainly on testimony from alleged perpetrators and their colleague.

Artificially created red tape delays of the investigation, helps to create conditions for the evasion of perpetrators of torture from responsibility and contradicts the principle of inevitability of punishment for torture (for example, criminal cases of torture against Rajapov Murat, Shabraliev Damir, against Davlatov Almaz).

Due to the specifics characteristic of the SNSC as a closed institution, lawyers often have difficulties with physical access to the special services building in order to meet with the investigator whose criminal case is in progress.

For the period from 2017 to 2019, only 6 criminal cases on charges of torture were sent to the court by the investigative units of the SNSC, of which: in 2017 - 3, in 2018 - 2, in 2019 - 1.

According to the National Centre for the Prevention of Torture, reflected in the annual activity report for 2019, out of 145 criminal cases of this category under the proceedings of State National Security Committee investigators, 48% of cases were dismissed for the lack of corpus delicti. According to the National Centre for the Prevention of Torture, the termination of half of criminal cases on charges of torture may indicate that impunity for perpetrators of torture and the inability to restore the rights of their victims remains a major problem today, which will lead to the continuation of this practice of lawlessness by law enforcement officials.

Questions:

1) *Since the consideration of the previous report in March 2014, what steps have been taken to ensure effective investigation of allegations of torture, including against Rajapova Nargiza, Rajapov Murat, Shabraliyev Damir, Davlatov Almaz?*
2) *Have State National Security Committee investigators been trained to investigate criminal cases of torture in connection with the full delegation of powers to investigate cases of this category under the new CPC, which entered into force on January 1, 2019?*
3) *What actions the Kyrgyz authorities are intend to take to establish good procedural practices that guarantee effective investigation of each case of torture and ill-treatment, respecting the principles of speed, independence, impartiality, thoroughness, and prosecution and punishment of perpetrators in accordance with the gravity of this crime, restoration of violated rights of victims of torture.*

2.4. Impunity

According to official data from the Office of the Procurator-General of the Kyrgyz Republic, between 2013 and 2017, 54 criminal cases were sent to the court on charges of 108 persons for the crime of "torture." Only 12 persons (11 per cent) were found guilty and sentenced to 7 to 11 years' imprisonment.

In 2019, the court considered 7 criminal cases on charges of 26 persons of torture. Only 2 (8 per cent) had been found guilty of torture and sentenced to 8 years' imprisonment. However, this sentence was also changed by a higher court, which reclassified the actions of the defendants from torture to abuse of office (article 305 part 1 of the Criminal Code that has lost force) and freed all defendants from punishment due to the expiration of the statute of limitations for criminal prosecution. Thus, of the 26 defendants accused of torture, no one had suffered real punishment.

It can be concluded that, despite numerous allegations of torture, the number of persons convicted and effectively punished for torture remains low and few are prosecuted for these crimes. Impunity for those involved in torture was a compelling obstacle to the eradication of torture in Kyrgyzstan.

Question:

1) *Is there any analysis of judicial practice in cases of torture? What are the main findings of this analysis with regard to the reasons for the failure to ensure the irreversibility of punishing torture in accordance with the gravity of this crime?*

2.5. Reparation

One of the key tasks in effectively investigating cases of torture and ill-treatment is to provide fair compensation to the victim.

According to the Coalition against Torture, since the consideration of the previous report in March 2014, four claims for compensation for non-pecuniary damage to victims of torture have been settled by the Kyrgyz courts:

1) 1) In 2017, a lawsuit for the recovery of non-pecuniary damage in the amount of 200 thousand soms (2800 US dollars) in favor of relatives of Tashkenbay Moidunov, who died as a result of torture in the temporary detention facilities of the internal affairs bodies of the Bazar-Korgon district. Earlier, in July 2011, the Committee found a violation by Kyrgyzstan of Tashkenbay Moidunov's rights to life, to protection from torture and to an effective remedy (CCPR/C/102/D/1756/2008). The Committee recommended that the State conduct a proper investigation, bring the perpetrators to justice and compensate for the damage;

2) in 2019, a lawsuit for the recovery of non-pecuniary damage in the amount of 200 thousand soms (2800 US dollars) in favor of the relatives of Akmatov Turdubek, who died after he was beaten in the police department of the village of Myrzake, Uzgen district. In October 2015, the Committee also found a violation of Akmatov's rights and recommended that Kyrgyzstan conduct a new impartial investigation and prosecute the perpetrators, as well as provide the victim's family with adequate compensation (CCPR/C/115/D/2052/2011);

3) On December 4, 2019 a lawsuit for the recovery of non-pecuniary damage in the amount of one million soms (US $ 14,320) in favor of Anarbek uulu Esenbek, who in December 2015 was tortured by police officers of the city of Tash-Kumir in order to obtain confessions of theft. On December 21, 2017, the court found police officers guilty of torture and abuse of power and sentenced them to 8 years in prison.

4) in February 2020, a lawsuit for the recovery of non-pecuniary damage in the amount of 300 thousand soms (4,300 US dollars) in favor of the relatives of Ernazarov Rakhmanberdi, who died during his detention in the temporary detention centres for internal affairs bodies of Osh. Earlier, in 2015, the Committee found Kyrgyzstan responsible for the arbitrary deprivation of life and torture of Ernazarov (CCPR/C/113/D/2054/2011)

In all four cases, the amounts awarded by the courts were disproportionate to human rights violations and did not meet the criteria of reason and fairness.

Questions:

1) *Please provide information on all cases in which the claims for material damage and non-pecuniary damage have been filed with the court by persons subjected to torture and ill-treatment, as well as on the results of the consideration of claims, on the amount of sums that were satisfied by the court in each case.*
2) *Please comment on the statements that the amounts of 200 thousand soms each awarded by the courts to the relatives of Moidunov Tashkenbay and Akmatov Turdubek, the*

amount of 300 thousand soms awarded to the relatives of Ernazarov Rakhmanberdi (all three died as a result of torture), and the amount of compensation for non-pecuniary damage of one million soms awarded to the victim of torture, Anarbek uulu Esenbek, does not meet the criteria of reason and justice.

3) *Does the Kyrgyz legislation establish criteria, the application of which should be the basis for judges to calculate the amount of compensation for non-pecuniary damage caused by a violation of human rights and freedoms, and in particular in the case of torture or death as a result of torture?*
4) *What other reparations were available to victims of torture?*

2.6. Exclusion of evidence obtained under torture

The Committee recommended that Kyrgyzstan take measures to ensure that no evidence obtained through torture could be used in the courts.

The Code of Criminal Procedure of the KR expressly stipulates that any evidence obtained through torture or ill-treatment must not be admitted in court (art. 12 Part 3) and that evidence obtained through torture must be declared inadmissible, null and void and cannot be the basis of a decision in a case (art. 82 Part 4 paragraph 2).

In practice, judges generally regard the defendants' statements that confessions and other evidence were obtained as a result of torture as an attempt to evade criminal responsibility. This bias is reflected in the nature of the verification of the defendant's or his defence counsel's claim of torture and, accordingly, in the decision on the defence's request to exclude evidence obtained as a result of unlawful acts.

In many criminal cases, lawyers file motions in court to exclude evidence obtained through torture, while prosecutors often do not support the application and leave it to the court to decide. Practice shows that judges in most cases do not grant such applications.

Questions:

1) *Please comment on the statement that torture is routinely used to get confessions and that judges regularly ignore the accused's allegations of torture as an attempt to evade responsibility.*
2) *Please provide up-to-date statistics and examples of cases where evidence has been found inadmissible by the court because it has been established that it was obtained by torture.*
3) *Please provide statistical data on the number of cases in which suspects, at the stage of verifying the legality of detention or accused persons, have made allegations of torture or ill-treatment before a court of law when examining the merits of a case. What action had been taken by the court (the investigating judge), as well as the prosecutor involved, in response to allegations of torture.*

2.7. Access to medical evidence of torture

The Coalition against Torture welcomes the initiatives of the Government of Kyrgyzstan aimed at implementing the principles of the Istanbul Protocol and the inclusion of the issue in the Coordination Council of Human Rights Work Plan for 2019. The importance of unifying and

standardizing the medical documentation of torture and ill-treatment and punishment in all health-care institutions, regardless of departmental subordination and forms of ownership, is noted in Kyrgyzstan's periodic report (paras. 133-135).

The Draft Government decree developed by the Ministry of Health in 2018 provides the approval of a special document "Rules for the medical documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment, " which will determine the procedure for conducting a medical examination in accordance with the principles of the Istanbul Protocol, regulate the uniform procedure for interaction between state bodies and officials in the identification, registration and reporting of alleged cases of torture and ill-treatment, and establish standards for forensic, psychiatric, forensic and psychological examinations of torture and ill-treatment. The same draft resolution proposes the approval of a special action plan for the implementation of the principles of the Istanbul Protocol.

Questions:

1) *Please provide updated information on the ordinance "On the unification and standardization of medical documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment"? Was the project adopted as part of the implementation of the Coordination Council for Human Rights Work Plan for 2019?*
2) *What significant activities are included in the action plan for the implementation of the principles of the Istanbul Protocol, do they provide allocation of the appropriate resources for the successful implementation of these activities?*

2.8. Effectiveness of the National Centre for the Prevention of Torture (NPM Kyrgyzstan)

In its concluding observations, the Committee recommended that the effective operation of the National Centre for the Prevention of Torture should be provided with the necessary resources to enable it to carry out its mandate independently and effectively (para. 7).

The Coalition against Torture welcomes the general efforts of the Kyrgyz authorities to promote the establishment and development of the National Centre for the Prevention of Torture, which is entrusted with the functions of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture.

However, there is a concern about legislative changes that have excluded article 146-2 of the Criminal Code, which criminalized obstruction to the National Centre for the Prevention of Torture. Against the backdrop of continued attempts to obstruct the National Centre for the Prevention of Torture, such initiatives weaken the guarantees of the independence of the NPM.

In the periodic report, the Government notes 46 reported incidents of obstruction and interference with the National Centre for the Prevention of Torture and also acknowledges that such incidents continue (para. 137).

In practice, obstruction to the activity of the National Centre for the Prevention of Torture may be expressed by or in the absence of employees from closed institutions; or requiring the inspection of the personal belongings of the preventive visit team; or in banning the production of photography of objects, even if they are not classified or providing security and protection to the

institution. All these actions violate the requirements of the National Centre for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act.

Questions:

1) *Have the effective investigations been conducted into obstruction and interference with the National Centre for the Prevention of Torture, please provide information on the results of the investigation?*
2) *Has an analysis been made of the causes and conditions conducive to obstruction and interference with the National Centre for the Prevention of Torture, despite legal prohibitions? What measures does the Government intend to take to prevent them further?*
3) *What types of liability and penalties are provided for by the current legislation of Kyrgyzstan, after the deletion of article 146-2 from the Criminal Code of the Kyrgyz Republic?*

The Subcommittee noted the importance of continued visits to places of detention by national preventive mechanisms under COVID-19 conditions, as public health measures to address the epidemic could increase the risk of ill-treatment of detainees.

However, during the period of the introduction of a state of emergency in the cities of Bishkek, Osh, Jalal-Abad and some parts of Kyrgyzstan, from March 25 to May 10, 2020, employees of the National Centre for the Prevention of Torture were limited in access to the Bishkek police department and the pre-trial detection center -1 of Bishkek. This was due to the fact that the Bishkek City Commandant's Office refused to issue special permits to employees of the National Centre for the Prevention of Torture in a state of emergency, which effectively prevented them from reaching the location of these institutions. At the same time, the staff of the National Centre for the Prevention of Torture territorial offices in the cities of Osh and Jalal Abad, where a state of emergency was also introduced, were provided with special travel permits by local commandants and preventive visits to places of deprivation of liberty.

On May 12, 2020, after the lifting of the state of emergency, employees of the National Centre for the Prevention of Torture, despite of having special suits and certificates of the absence of COVID-19, were denied the access to the pre-trial detection center -1 in the city of Bishkek, referring to the order of May 1, 2020 "On the regime of special conditions in pre-trial detention centers," in which, there is no indication of a ban on access of employees to the National Centre for the Prevention of Torture.

The refusal of the commandant of the city of Bishkek to issue special permits to employees of the National Centre for the Prevention of Torture and the fact of denial of access to the pre-trial detection center -1 prepared in accordance with sanitary and epidemiological requirements violate the requirements of article 26 part 1 paragraph 3 of the law "On the National Center for the Prevention of Torture and Other Cruel Inhuman or Degrading Treatment, "which defines the special status of the National Centre for the Prevention of Torture, whose employees are entitled to unhindered access to places of detention on any day and at any time of the day. According to these facts, which should be qualified as obstruction of the National Centre for the Prevention of Torture by the leadership of the National Centre for the Prevention of Torture, appeals were made to the prosecutor's office.

Question:

1) *Please provide information on the results of the audit of management's complaints regarding obstruction by the Bishkek City Commandant's Office and State penitentiary service under the Government of the Kyrgyz Republic?*

2.9. Deaths in custody

In its concluding observations, the Committee expressed concern at the number of deaths in custody and at the fact that in no case had the State party taken measures to promptly, impartially and fully investigate deaths in custody (para. 15).

According to the information, every year at least 60 people die in prisons due to various diseases included in the list of diseases that prevent the further serving of their sentences. At least 18 people sentenced to life imprisonment died between 2011 and 2019 from various diseases. There is no evidence of an investigation into these deaths. The Penal Enforcement Code does not provide for the waiver of qualified medical care or death due to illness or suicide as a legal basis for investigation.

On 25 July, human rights defender Azimjan Askarov, known for his investigations of the torture made by the police, died in the hospital of labor colony No. 47. According to the medical report, the cause of Askarov's death was acute respiratory failure, which developed against the background of bilateral total pneumonia.

The UN and international organizations appealed to the Kyrgyz government to release a 68-year-old sick prisoner, for whom the likelihood of contracting COVID-19 was especially high and extremely dangerous. However, the authorities did not heed these calls.

The Office of the United Nations High Commissioner for Human Rights called on the Kyrgyz authorities to immediately conduct an impartial investigation of the death of Askarov.

Questions:

1) *Please provide complete information on all deaths in custody and custodial sentences, including life imprisonment, including suicide, since the consideration of the previous report in March 2014.*
2) *What remedies are offered by the Government in cases of violation of the right to life?*
3) *Please provide information on the process of investigation and punishment of persons responsible for deaths in custody and serving custodial sentences, including life imprisonment, as well as measures to compensate victims, procedures to notify relatives and the results of the investigation.*
4) *What measures have been taken to punish those responsible for deaths from illnesses of convicted persons entitled to further exemption from serving their sentences?*
5) *Please provide comprehensive information on the circumstances of the death of human rights' defender Azimjan Askarov.*

3. THE RIGHT TO FREEDOM AND SECURITY OF PERSON, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY AND FAIR TRIAL (ARTS. 9, 10 AND 14)

3.1. Medical examination during detention

In its concluding observations, the Committee expressed concern at the lack of respect for fundamental guarantees for all persons deprived of their liberty and recommended that medical examinations be conducted immediately after their detention (para. 16).

The requirement of mandatory examination of a person detained on suspicion of committing a crime is established by article 45, part 6, of the Code of Criminal Procedure. In accordance with this rule, every time a suspect is brought before, he is a subject to a mandatory medical examination with the preparation of the corresponding document. The responsibility for the medical examination lies with the administration.

The police monitoring conducted by the staff and the Akyikatcha Office (Ombudsman) showed that 93% of suspects are subject to mandatory examination, of which 92% immediately at the time of placement in, the rest during the day. Rarely, but there were cases when the detainees found it difficult to answer, since a fairly long time had passed since their placement in the detention center.

A serious problem is that in about 11% of cases, the examination is carried out by an employee, this fact calls into a question the achievement of the goals of his\her activities, since an employee who does not even have minimal medical knowledge is objectively unable conduct correctly the patient's survey and provide the necessary medical interventions and, accordingly, assess correctly the physical and mental condition of the patient, and the need for his\her treatment.

The problem of timely, complete and high-quality medical examinations of detained persons is directly related to the problem of the absence of medical workers on an ongoing basis in these institutions. According to the results of monitoring, the requirement of confidentiality during a medical examination is not met in every third case.

The recommendations of the Akyikatcha (Ombudsman) and the Coalition against Torture aimed at guaranteeing protection against torture of persons detained in the Department of the internal affairs and improving their conditions of detention, including timely and high-quality medical examinations and services, are addressed to the state authorities from year to year. However, the Government of the Kyrgyz Republic and authorized State bodies do not take appropriate measures to implement them, and certain measures taken do not have the proper effect of eliminating the identified systemic violations.

Questions:

1) *What measures have been taken, since the consideration of the previous report in March 2014, in order to create a stable practice when a person detained because of being suspicion of committing a crime was subjected to a medical examination: (a) immediately; b) by a qualified medical specialist; c) with the preparation of the relevant document, established model; d) in full confidentiality?*
2) *Which Departments of Internal Affairs has a staff of medical workforce?*
3) *In what way is it ensured that a member of the Department of Internal Affairs staff conducts an independent examination, in accordance with the principles of the Istanbul Protocol?*
4) *How will the problem of the permanent absence of medical professionals in the Department of Internal Affairs be addressed?*
5) *How is the Government and State bodies working to study, discuss and implement the recommendations of the Akyikatcha (Ombudsman), the Kyrgyz Coalition against Torture, drawn up on the basis of the monitoring of places of deprivation of freedom*

and restriction of freedom, including the timely and effective medical examination of persons kept in them and the provision of medical assistance to them?

6) *Please provide information on the progress in the integration of "parallel" (departmental) health care into the general health care system, as a result of which the provision of medical services in all places of deprivation of freedom will be carried out by medical workers of the general civil health care system?*

3.2. Verification of the legality of detention

The right to freedom and security of person according to the Constitution is a constitutional human right. According to article 24 of the Constitution, every detained person has the right to verify the legality of his detention. This right is enshrined in article 45, paragraph 1, paragraph 11, of the Code of Criminal Procedure as a right of a suspect.

Verification of the legality of detention is carried out by the investigating judge at the same time as a request for a preventive measure. Further the regular verification of the legality of detention and deprivation of freedom is not carried out.

A detained person is deprived of the procedural possibility of going to court on his own to verify the legality of detention or continued detention in any situation. This verification is carried out at the request of the prosecution once, which completely emancipates the meaning of the constitutional guarantee. It is difficult to imagine a situation where the prosecution admits in court that the detention was unlawful.

However, practice shows that detention could have been lawful at the time of the actual restriction of freedom, but after the expiration of time, such detention may become illegal due to the changed circumstances, unproven charges, illness of the suspect, etc. For example, in quarantine conditions, the terms of detention have expired and have been extended without any assessment of the situation with the suspect, accused, convicted, although the constitutional guarantee applies to all detainees: "Any detained person shall have the right to verify the legality of detention in accordance with the procedure and with the established by law periodicity."

Verification of the legality of deprivation of freedom, for example, of persons in psychiatric hospitals is not provided by law.

Question:

1) *Please explain how the Code of Criminal Procedure, Criminal Enforcement Code of the Kyrgyz Republic and other laws establish a procedure for regular verification by detainees of the legality of their detention, arrest, continued deprivation of freedom?*

3.3. Problem of exceeding legal terms of detention

For a long time The Coalition against Torture has drawn the attention of the supervisory and monitoring bodies to the problem of exceeding legal periods of detention.

According to article 9 of the Act "On the Procedure and Conditions of Detention of Persons Suspected and Accused of Committing Crimes," departments of internal affairs are intended exclusively for the detention of persons detained on suspicion of committing a crime.

The new Criminal Enforcement Code of the Kyrgyz Republic, which made some amendments in the name of the procedural status of a person in the pre-trial and judicial stages of criminal proceedings, did not affect the meaning of the provisions of this Law that a person (suspected under the new Criminal Enforcement Code of the Kyrgyz Republic), in respect of which a preventive measure in the form of detention is chosen, must be detained in pre-trial detention center.

As part of the monitoring of the temporary detention facilities of the Internal Affairs Bodies in the Jalal-Abad region, more than 400 facts were revealed when the accused, after the court had chosen a preventive measure against them in the form of detention, were not transferred to the pre-trial detention center, and were illegally detained in temporary detention facilities.

The leadership of the territorial Internal Affairs Bodies and the administration of the temporary detention facilities explain the untimely transfer, firstly, by the absence of a pre-trial detention center on the territory of the Jalal-Abad region, in connection with which the accused from the temporary detention center of the Jalal-Abad region are forced to be transported to the pre-trial detention center-5 in the city of Osh (115 km); secondly, the lack or inadequacy of human and material resources (convoy, special vehicles, fuels and lubricants, etc.). However, these arguments cannot and should not justify a flagrant violation of the law, which is clear and can cause significant harm to the rights and interests of persons held in custody in the detention facilities.

Question:

1) *What practical measures are being taken to solve the problem of exceeding the legal time limits for the detention of several hundred suspected, for whom a preventive measure in the form of detention has been chosen, in temporary detention centers departments of internal affairs in the Jalal-Abad region due to the lack of resources in the region and to transfer them to* pre-trial detention center *-5 in the city of Osh?*

4. CONDITIONS OF DETENTION (art. 10)

In its concluding observations, the Committee expressed concern about the extremely harsh conditions in places of detention, including overcrowding, lack of hygiene and lack of food and drinking water, and recommended that efforts be intensified to improve conditions of detention with a view to bringing them into line with article 10 of the Covenant (para. 17).

The Akyikatcha Office (Ombudsman) and the Coalition against Torture carry out regular monitoring of conditions of detention. It should be noted that certain measures are being taken by State bodies to improve conditions of detention, but despite this, it is not yet necessary to talk about the systemic nature of changes and the creation of conditions in places of deprivation of freedom and restriction of freedom that meet the minimum requirements of international standards (Mandela Rules, etc.) and national standards.

Questions:

1) *What measures have been taken since the consideration of the previous report in March 2014 in order to implement systemic changes and create conditions in places of deprivation of freedom and restriction of freedom which meet the minimum requirements of international standards?*

4.1. Conditions of detention of persons sentenced to life imprisonment

On January 1, 2020, at least 347 people sentenced to life imprisonment were serving sentences in prisons in Kyrgyzstan. With the adoption of the new Criminal Enforcement Code of the Kyrgyz Republic, the situation of this group of convicts has changed dramatically, and they have lost any prospect of being released after a certain period or the right to early release after 20 years of serving their sentence.

The conditions of detention of persons sentenced to life imprisonment in No. 1 were criticized by the UN Special Reporter on torture and other cruel, inhuman or degrading treatment or punishment. "In No. 1 and in correctional colony No. 47, prisoners are kept in basements in terrible conditions, in fact in isolation and in single cells built in 1943 and intended for prisoners awaiting the death penalty. Their isolation is applied automatically as a result of a sentence of life imprisonment and is in no way related to their conduct in detention. "

Furthermore, the Subcommittee against Torture "point out with particular concern the inhumane conditions in which persons sentenced to life imprisonment are held in former death row No. 1." The Subcommittee against Torture called on the authorities to close immediately the former death row cells in No. 1, which hold persons serving life sentences.

In 2020, a special study was carried out on the situation of vulnerable categories of persons held in institutions under the Government of the Kyrgyz Republic, including persons sentenced to life imprisonment. The general conclusion is that the conditions of detention in a number of institutions do not meet the minimum requirements of international standards and the provisions of national legislation.

Questions:

1) *What legislative and practical measures are envisaged by the Government to change the situation in the conditions of detention of persons sentenced to life imprisonment, their correction and resocialization, reintegration into society, maintaining socially useful ties?*
2) *What remedies are provided by the state to guarantee the rights to humane treatment and respect for human dignity in conditions of life imprisonment?*

5. PROTECTION OF VICTIMS, THEIR FAMILIES, HUMAN RIGHTS DEFENDERS AND LAWYERS AGAINST REPRESSION (ARTS. 2, 22 AND 26)

In its concluding observations, the Committee recommended ensuring freedom of association in accordance with article 22 of the Covenant and refraining from imposing disproportionate or discriminatory restrictions on freedom of association (para. 25).

In recent years, the persecution of human rights organizations and human rights defenders actively involved in the protection of human rights, including members of the Coalition against Torture, has increased periodically in Kyrgyzstan:

1. On April 28, 2017, lawyer Muhaye Abduraupova, a member of the Coalition against Torture, defending the interests of the victim of torture, was attacked by relatives of the opposing party. Abduraupova filed a statement with the prosecutor's office of the city of Osh.

2. On April 6, 2019, the office of the Spectrum Public Foundation, which is a member of the Coalition against Torture, was burned in the city of Karakol. Human rights activists filed a statement to the law enforcement agencies in the city of Karakol.

3. On May 23, 2019, unknown persons with cameras and recorders, who later stated that they belonged to the Youth Patriotic Movement of Kyrgyzstan, broke into the meeting room where a working meeting of lawyers organized by the Coalition against Torture was held and aggressively demanded to stop it. They claimed that Western countries and organizations financed by them were trying to destabilize peace in Kyrgyzstan. When the victims were explained that the working meeting was devoted to discussing with international experts the international and national legal practice of protection against torture, they stated that they had been misled. Participants in the meeting made a statement about disorders and obstruction of the professional activities of a lawyer to the police.

4. On May 29, 2020, officers of the State Security Committee detained a human rights activist and head of the regional human rights organization Ventus Kamil Ruziev, who is known for his work on combating torture in places of detention, as well as providing legal assistance in cases of domestic violence. Initially, Ruziev was charged with "Forgery of documents" and "Fraud," later only the article providing for responsibility for forgery of documents remained in the charge, and the court released the human rights activist under house arrest. Ruziev himself believes that he was arrested for his human rights activities: "Over the past year, I have filed complaints against the State National Security Committee of the Kyrgyz Republic and the prosecutor's office. I also help others whose rights have been violated. The State National Security Committee of the Kyrgyz Republic is aware of my human rights work and has decided to put pressure on me to stop this activity. " Being disagree with the accusation, Kamil Ruziev, being in temporary detention center, went on a hunger strike. An ambulance team was called to him three times.

Question:

1) *Provide comprehensive information on the progress and results of the investigation:*
   a) allegations of an attack on lawyer and human rights defender Muhaya Abduraupova;
   b) arson of the office of the human rights organization "Spectrum" in the city of Karakol,
   c) aggressive actions that prevented the work of lawyers a of the Kyrgyz Coalition against Torture; and
   d) investigations criminal case against human rights' defender Kamil Ruziev.