



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/KGZ/Q/2
23 June 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE

**List of issues prior to the submission of the
second periodic report of KYRGYZSTAN (CAT/C/KGZ/2)***

**Specific information on the implementation of articles 1 to 16 of the Convention,
including with regard to the Committee previous recommendations**

Articles 1 and 4

1. With reference to the previous conclusions and recommendations of the Committee (A/55/44, para. 74), please inform about activities undertaken to ensure that the definition of torture in the Convention is fully incorporated into domestic law. Please explain whether the 2003 amendment of the Criminal Code, criminalizing torture (art. 305-1), is fully in line with the provisions of the Convention under article 1. Please explain why a 3-5 year prison term provided for the crime of torture under article 305-1 of the Criminal Code is an appropriate punishment? Where does this term of punishment fall relative to other terms of punishment available under the Criminal Code? Was this provision of the Criminal Code ever invoked in Court? Please provide detailed statistical data, in general, on the number of criminal proceedings initiated on the basis of allegations of torture or ill-treatment by the police and other public officials, and on their outcome.

2. Given that the Convention is directly applicable, please provide statistical data on cases, if any, where its provisions were invoked in court, and explain whether the courts have applied the Convention in any case.

Article 2

3. Please indicate what safeguards exist for those arrested or held in pre-trial detention, such as access to an independent lawyer and medical doctor, and right to contact a member of his/her family, and how these measures are implemented in practice.

* The present list of issues was adopted by the Committee at its forty-second session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

4. With reference to the previous conclusions and recommendations of the Committee (A/55/44, para. 75 (b)), please indicate what steps have been taken, in general, to prevent acts of torture and ill-treatment to occur. In this relation, the Committee has noted that in July 2000, when examining the initial report of the State party under the International Covenant on Civil and Political Rights, the Human Rights Committee expressed grave concern about instances of torture, inhuman treatment, and abuse of power of law-enforcement officials; and asked the State party to amend its legislation and ensure that acts of torture are indictable offences, and that all allegations of torture by officials are properly investigated by independent bodies and those responsible prosecuted (CCPR/CO/69/KGZ, para. 7). It also asked that a provision be made for medical examination of detained persons, particularly of persons held in pre-trial detention, in order to ensure that no physical abuse of detainees occurs (ibid.). The State party was finally asked to establish an independent system of monitoring all places of detention with the purpose of preventing torture and other abuses of power by law enforcement officials (ibid.). Please indicate what steps have been taken to address these specific recommendations. Please indicate whether any centralized register of all complaints of torture and ill-treatment allegedly committed by law-enforcement authorities exists. Please provide information on the number of torture and ill-treatment claims allegedly committed by representatives of the State Committee on National Security, and their outcome.

5. Consistent with article 2 of the Convention, what administrative, legislative, judicial, or other measures are being taken in response to the Human Rights Committee's requests for amendments to the State policies regarding (a) investigation of all torture allegations; (b) the creation of independent monitoring and investigating bodies; and (c) medical examination of detainees, particularly pre-trial detainees.

6. The Committee has noted that the Committee on the Rights of the Child, in November 2004, expressed concern that in the State party, persons under 18 allegedly continue to be subjected to torture and cruel treatment, in many cases when in police custody or awaiting trial; access to legal counsel and/or medical services and communication with their families also seems limited for young persons in police custody; the complaint procedures for these abuses are not child-sensitive and have not proven to be efficient as no sanctions seem to have been applied (CRC/C/15/Add.244, para. 37). Please indicate what concrete steps have been taken by the State party to address those specific problems. Information before the Committee indicates that juveniles are mistreated while detained, and detained in crowded conditions with non-juvenile detainees. What measures are being taken to address these issues?

7. Please indicate how, in practice, minors are separated from adults while in detention. Information before the Committee indicates that women in detention have been subjected to particularly cruel treatment. What measures are being taken to address this situation? What measures are being taken to ensure that women in detention receive the required medical attention?

8. Information before the Committee indicates particularly harsh treatment of persons in the context of anti-terrorism activity by police forces, in particular in joint efforts with the Uzbekistan authorities. Please indicate what measures are being taken to ensure that the anti-terrorist activities of the State party are consistent with international law, especially human rights law, as required by Security Council resolution 1456 (2003).

9. Please indicate whether the organization and the prerogatives of the Office of the State party's Ombudsman comply with the Paris Principles. Please explain whether the Office is provided with sufficient human and financial resources, and provide statistical information in this connection, including complaints received and their outcome.

Article 3

10. Please provide statistical data, disaggregated by country of origin, on the number of asylum-seekers and refugees in Kyrgyzstan, covering the reporting period.

11. Please provide information on the number of deportations and returns that have taken place on the basis of bilateral or other readmission agreements since the entry into force of the Refugee Act in 2002. Please present detailed statistics in this respect, indicating the deporting State and the receiving countries of those returned/sent, respectively. Please indicate what kind of judicial and/or other safeguarding mechanisms are in place for the review of the expulsion or return decisions and what effective measures have been taken to ensure that under no circumstances a person is expelled or returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

12. The Committee has information indicating that a significant number of refugee and asylum claims come from Uzbekistani individuals. Further information indicates that the State party is involved in counter-terrorism activities with the Uzbekistan Government and has on a number of occasions returned individuals to Uzbekistan despite claims of asylum. In this connection, the Committee has noted that in August 2007, the Committee on the Elimination of Racial Discrimination expressed concern about the alleged refusal of the State party to grant refugee status to certain individuals, such as Uighurs, Uzbeks, or Chechens, and it also expressed concern with regard to allegations of forcible return of ethnic Uighurs and Uzbeks to their countries of origin (CERD/C/KGZ/CO/4, para. 9). What mechanisms are in place to ensure that the State party adheres to its obligations under article 3 of the Convention? In particular, what procedural safeguards are available to asylum-seekers, and how are these safeguards made effective in practice?

13. Please describe in detail the process that preceded the decision of the State party to return Otabek Muminov in secret in June 2008. Was Mr. Muminov offered the opportunity to challenge his deportation? Was he offered an appeal of any initial deportation decisions? What follow-up measures has the State party taken to ensure that he has not been subjected to prohibited conduct since his deportation?

Article 5

14. Has the State party implemented legislation fulfilling its obligations under article 2 to provide jurisdiction over crimes of torture, as provided in article 5? Does the State party have all the jurisdictional capabilities required by article 5 in its Criminal Code?

Article 8

15. Please provide information on whether the State party has ever rejected, for any reason, requests for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaged its own prosecution as a result. Please provide information on the status and outcome of such proceedings.

Article 10

16. Please indicate what kind of human rights training, including guidelines on the prohibition against torture and ill-treatment, is currently provided for (a) judges and prosecutors; including on the prosecution and punishment of perpetrators of acts of torture in a manner reflecting the gravity of the crime; (b) medical personnel, including specific training in forensic documentation of torture and other forms of physical and psychological abuse; and (c) law enforcement officials, including border guard and customs officials. Please also include information on any existing guidelines on the prohibition against torture and ill-treatment. Please indicate whether training modules on rules, instructions and methods of interrogation, reflect the absolute prohibition of torture, and whether any specific training for medical personnel on how to identify signs of torture, and cruel, inhuman or degrading treatment, exist, in line with the requirements of the Istanbul Protocol.

17. Please advise on the progress of the Police Assistance Programme for Kyrgyzstan implemented in conjunction with the Organization for Security and Cooperation in Europe. How is the Government implementing the reforms discussed by the Interior Minister of the State party in 2006, which were to be implemented between 2007 and 2010? What measures have been taken, and what concrete steps are planned?

Article 11

18. In line with article 11 of the Convention, please provide information on the procedures in place to keep under systematic review interrogation rules, instructions, methods and practices and arrangements of custody with a view to preventing torture and the frequency of such review.

19. Despite some possible progress, information before the Committee points to the need for significant improvement in prison conditions, including in the context of temporary and pre-trial detention, or "IVS". There is particular concern arising from conditions at the centres at Cholponata, Karakol, and Nookat. What measures are being taken to address these issues, which include the disrepair of infrastructure, the lack of proper heat and water, the overcrowding of prison, the unduly long detention durations, and corruption?

20. How do conditions of stay and treatment in the temporary detention centres under the authority of internal affairs bodies satisfy the national and international standards with respect to (a) medical certification; (b) number of prisoners per cell; (c) food and sleeping arrangements; and (d) lighting, ventilation, heating, sanitation, and access to fresh air?

21. The Organization for Security and Cooperation in Europe has indicated areas for improvement in the policy of the State party with respect to medical examinations at the initial stages of custodial restraint as a means of preventing ill-treatment and torture. Please provide details on the current policies of the State party regarding this matter. For example, are all detainees provided medical examinations; do all detainees have the right to such examinations; are the medical examiners independent from detaining authorities; and do they have the requisite training to identify indications of abuse?

22. Please advise whether a legislation has been implemented that ensures independent monitors such as the International Committee of the Red Cross and non-governmental organizations (NGO) increased access to all places of detention, with the right to unannounced visits? Is there a central authority charged with granting access to detention centres?

23. Please provide statistical information, disaggregated by sex, age, ethnicity and location i.e. region/city, on detainees on remand and on the prison population, covering the reporting period, and also disaggregated by offense and length of detention. Please explain whether men, women and children are kept in separate facilities through their whole period of detention or confinement¹.

Article 12

24. Please inform whether any statute of limitation applies to acts covered under article 305-1 of the Criminal Code. In general, please provide information, including detailed statistical data, on to the disciplinary procedures and sanctions against law-enforcement officials and the statute of limitations thereon.

25. Reports of independent experts indicate that the activist Bektemir Akunov had been tortured prior to his death in detention and that charges have been brought against two police officers of Naryn City for negligence. Please update the Committee on the status of that prosecution. Have more serious charges been brought in the matter, in particular under Criminal Code article 305-1? Please also describe the investigative efforts made by the State party in confirming the reports of independent experts and identifying those responsible. Please also update the Committee on the status of the suit filed by Akunov's family against four officers of Naryn City, and indicate whether the family has been awarded and has received remedies.

26. Information before the Committee indicates claims of torture and rape while in temporary detention by Zulhumor Tohtonazarova, as well as a pregnancy resulting from the rape that ended in Ms. Tohtonazarova giving birth prematurely while handcuffed to a bed in the sight of male officers. Likewise, the Committee is concerned by reports regarding the coercion and prosecution of activist Azimjan Askarov, who defended Ms. Tohtonazarova. Please indicate what measures have been taken, consistent with the obligations of the State party under article 12, to investigate these allegations? At what stage are the proceedings currently, and whether remedies have been deemed appropriate and awarded?

27. Information before the Committee indicates claims that in January 2007 a pregnant witness in a theft case was reportedly hit, threatened and called a prostitute while being questioned by a Department of Internal Affairs officer, and then was subsequently hospitalized for 10 days. Although she complained to the prosecutor's office no action was apparently taken. Please explain whether an investigation was conducted and if not, why not? In addition, when the incident was reported by *Spravedlivost*, the officer filed a criminal suit for defamation. Please update the Committee on the status of that defamation law suit, and provide statistics regarding the number of defamation law suits that have followed accusations of ill treatment by the police forces.

Article 13

28. In its previous concluding observations (1999), the Committee expressed also concern at the insufficient guarantees for independence of the judiciary, particularly in respect of renewable-term appointments made by the President (A/55/44, para. 74 (b)). The Committee notes in this relation, that in July 2000, the Human Rights Committee also expressed concern

¹ See CCPR/CO/69/KGZ, para. 11.

about the lack of full independence of the judiciary, noting in particular that the applicable attestation procedure for judges, the requirement of re-evaluation every seven years, the low level of salaries, and the uncertain tenure of judges, may encourage corruption and bribery (CCPR/CO/69/KGZ, para. 15). The lack of full independence of the judiciary was also acknowledged by the Special Rapporteur on independence of judges and lawyers following his visit in the State party in 2005 (E/CN.4/2006/52/Add.3). Please indicate what steps have been taken to address the specific recommendations made in this relation in order to ameliorate the situation.

29. Please indicate which specific measures have been taken to strengthen the complaints system to ensure an effective, reliable and independent mechanism to undertake prompt, impartial and effective investigations into all allegations of acts of torture or ill-treatment by police, members of the State Committee on National Security, or other public officials and, where the findings so warrant, to prosecute and punish perpetrators, thus ensuring in practice, as invited by the Committee in its previous concluding observations, that the perpetrators of torture and ill-treatment do not enjoy impunity (A/55/44, para. 75 (c)).

30. According to information before the Committee, a number of NGOs and independent lawyers, that have reported acts of torture or ill-treatment, have been put under pressure or harassed by the authorities, in particular at regional level; and a number of NGOs were prosecuted by law-enforcement officials on charges of slander, and subsequently sentenced to heavy fines. Following her visit in the State party in 2001, the Special Representative of the Secretary-general on Human Rights Defenders noted that right to protest against human rights violations has been repressed (E/CN.4/2002/106/Add.1, para. 33). Please provide comments in this relation, and provide pertinent statistical data on the number of cases opened on slander charges against lawyers and human rights defenders (including NGOs) and their outcome.

Article 14

31. Please provide updated information on measures that are in place in the State party with regard to compensation and rehabilitation of victims of torture, and provide relevant statistical information.

32. According to information before the Committee, there have been a number of civilian casualties that have occurred in the framework of anti-terrorist operations: Uzbek Security forces, acting in southern Kyrgyzstan, have allegedly committed abuses, including murders, which were not properly prosecuted. Please comment on this information and explain whether any measures have been taken to ensure that complaints of acts of such nature are being properly investigated and those responsible prosecuted.

Article 15

33. Please enumerate comprehensively the provisions, in the domestic legislation of the State party, which ensure that the absolute prohibition against torture is not derogated from under any circumstances, prohibiting the use of any statement obtained under torture and establishing that orders, made by a superior, cannot be invoked as a justification of torture.

Article 16

34. Please provide updated statistical information on persons deprived of their liberty, both in civil and military institutions, for purpose of detention, correction, psychiatric treatment, specialized education etc., with data disaggregated by, inter alia, type of the institution, age, gender, and ethnicity.

35. According to information before the Committee, the conditions of detention in prisons and other detention facilities remain extremely poor. In its previous conclusions and recommendations, the Committee has asked the State party to improve prison conditions, taking into account the 1955 Standard Minimum Rules for the Treatment of Prisoners (A/55/44, paragraph 75 (e)). It notes, in this relation, that when examining the initial report of the State party under the International Covenant on Civil and Political Rights, in July 2000, the Human Rights Committee expressed concern, inter alia, about inhuman prison conditions, characterized by overcrowding, inadequate food and medical care (CCPR/CO/69/KGZ, para. 11). Please provide information on the steps taken in order to address these issues.

36. In this relation, please provide information, including detailed statistical data, on the measures taken to address the lack of adequate prevention policy and medical care for those infected with tuberculosis, HIV/AIDS, syphilis, in prisons and other places of detention. Please inform on the measures taken, to monitor and improve the situation, following the 2003 visits carried out by the Ombudsman in several prisons and pre-trial detention facilities. Please explain whether the Ombudsman has subsequently conducted such visits. Please elaborate on the existing safeguards against ill-treatment and torture of detainees, in particular in relation to the access to an independent medical doctor and the guarantee of the privacy of medical consultations.

37. With reference to the Committee's previous concluding observations, please indicate what steps were taken in relation to the supervision of Military places of detention and prisons in order to ensure that inmates are not maltreated and that they can be represented by counsel at their trials (A/55/44, para. 75 (e)).

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

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

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

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

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

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

44. The Committee has noted that in November 2004, the Committee on the Rights of the Child urged the State party to expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings, and recommended awareness-raising and promotion of positive, non-violent forms of discipline, especially in families, schools and care institutions (CRC/C/15/Add.244, paras 45-46). Please indicate what were the measures taken to address these concerns. Please indicate whether any measures have been taken to protect juveniles in conflict with the law in line with international standards, including the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1985).

Other issues

45. Please indicate whether any concrete measures have been taken to widely disseminate the Convention as well as the Committee's conclusions and recommendations, including through official websites, the media and NGOs, both in Kyrgyz, Russian, and other minorities' languages used in the State party. Please also indicate whether civil society organizations will be consulted during the preparation of the report.

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

47. Taking into consideration the relevant resolutions of the Security Council, please provide information on the legislative, administrative and other measures the State party has taken to

respond to the threats of terrorism, explain whether these measures have affected human rights safeguards in law and practice, and how the State party has ensured that measures taken to combat terrorism comply with all its obligations under international law.

48. Please provide detailed information on any difficulties preventing the State party from fully implementing the provisions of the Convention and the Committee's previous recommendations.

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

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

50. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the initial report, including any relevant jurisprudential decisions.

51. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the initial report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

52. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 1999, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.
