

# PROTECTION OF FUNDAMENTAL RIGHTS IN KYRGYZSTAN

## Briefing paper ahead of EU-Kyrgyzstan human rights dialogue, May 2019

This briefing highlights key concerns about freedom of expression as well as torture and other forms of ill-treatment, and identifies key recommendations to address these concerns that International Partnership for Human Rights (IPHR), Legal Prosperity Foundation and the Coalition against Torture in Kyrgyzstan urge representatives of the European Union to raise with the authorities of Kyrgyzstan during the EU-Kyrgyzstan Human Rights Dialogue

Despite commitments by President Jeenbekov's government to improve the human rights situation in Kyrgyzstan and achieve a more constructive relationship with civil society, human rights challenges persist in the country, contributing to a decrease in public confidence in the authorities.

Corruption remains an issue of central public concern, despite President Jeenbekov declaring a 'war on corruption' in early 2018, 41 percent of respondents in a sociological survey commissioned by the international organization International Republican Institute, felt that corruption had not reduced and 12 percent felt it had got worse.

Recent attempts by individual members of parliament to revive the adoption of the controversial "Foreign Agent's Law" and to strengthen control over the activities of non-governmental organizations (NGOs) run counter to President Jeenbekov's promise of more constructive interaction with civil society.

### ASSOCIATION

The 2016 initiative<sup>1</sup> to pass a bill branding NGOs as foreign agents has resurfaced recently as individual members of parliament called for increased control over the activities of NGOs following the 8 March

<sup>1</sup> In 2016 the Kyrgyzstani authorities tried to pass a bill equating NGOs with "foreign agents" and establishing tight state control over their activities. Parliament amended the draft law, leaving only a provision requiring NGOs to publish their budgets. The bill was then frozen until it was voted down by a majority of deputies who believed that if adopted, the law would have had a negative impact on the activities of civil society and the international image of Kyrgyzstan.



parade for International Women’s Day.<sup>2</sup> Some 400 civic activists as well as politicians and members of the LGBT community took part in the annual march in Bishkek on 8 March 2019. The march aimed at refocusing attention on the struggle for equal rights and opportunities. However, after seeing posters with slogans in support of LGBT rights, some members of parliament and citizens with radical opinions saw the march as a ‘gay parade’. As a result, some members of the Jogorku Kenesh (parliament) called for tighter controls over NGO activities at a subsequent parliamentary debate. The deputies’ calls were supported by the State Committee for National Security (SCNS): Orozbek Opumbaev, the deputy head of the SCNS suggested that MPs draft a law on “Foreign Agents” similar to the one adopted in Russia several years ago:

“Today we need a law like that on non-governmental organizations, adopted in Russia and in other countries. The biggest problem is that funding goes unchecked, especially for LGBT people ... If we pass a law like this, we will know which international organization is lobbying for this kind of action, which foreigners will visit and what we can do to oppose this.” Orozbek Opumbaev.

Members of the radical movement “Kyrk Choro” threatened a participant of the march live on television and held a protest demanding the resignation of the mayor of Bishkek, and that the organisers of the march should be brought to justice, that “LGBT propaganda” should be banned and that parliament should revise the law on NGO activities, saying that they were ready to take extreme action if their demands were not met.

## STATE SURVEILLANCE

The State Committee for National Security has refused to institute criminal proceedings relating to wiretapping of human rights defenders meeting in the café “Bukhara”. In September 2018 human rights defender Gulnara Dzhurabaeva and other human rights activists found a voice recorder under their table in a café where they were meeting. The NGO representatives lodged a complaint with the SCNS after the incident. But, according to Gulnara Dzhurabaeva, the SCNS replied in early January 2019, saying that the complaint would only be considered if a civil case was filed with the court, which would then instruct law enforcement agencies to investigate the incident.

## PEACEFUL ASSEMBLY

The Mayor of Bishkek declared the 8 March 2019 International Women’s Day march to be legal but MP Jyldyz Musabekova proposed that the law on rallies be amended to ensure that “organizers specify what will be written on posters.”

On 27th March 2019, activist Nurlan Karymshakov and his wife Gulnaz Imaeva were detained near the Russian Embassy in Bishkek, where they were holding a picket in protest against the policies of Russia’s President Vladimir Putin, who was due to visit Kyrgyzstan the next day. The picketers held posters saying: “Putin is an aggressor”, “Occupant”, “Murderer”, and also “We do not need a military base”. The police stated the grounds for their detention as calling for ethnic hatred and opened a criminal investigation under Article 313 of the Kyrgyzstani Criminal Code (“Incitement of racial, ethnic, national, religious or inter-regional hostility / discord”). The investigation is ongoing.

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2 Comments from MPs included: “The 8 March event was organized by NGOs and international organizations. Kyrgyzstan was the first country in Central Asia ever to hold a gay parade. It brings shame on the country”. “They [NGOs] get a lot of money from donors, but it’s not clear what their goal is, we need to raise this issue again.”

## FREEDOM OF EXPRESSION AND THE MEDIA

When President Sooronbai Jeenbekov came to power in November 2017, the Kyrgyzstani authorities were often criticized for violations of the rights to freedom of expression and media freedom, often as part of the legacy of former President Atambayev.

Sooronbai Jeenbekov's election campaign centered around guarantees of freedom of expression and the media and he confirmed they remained a priority for him in one of his first speeches as President on the International Day for the Protection of Human Rights,<sup>3</sup> as well as during a meeting with the High Representative of the European Union for Foreign Affairs and Security Policy Federica Mogherini<sup>4</sup>

Since coming to power, President Jeenbekov has been outspoken in his criticism of former President Atambayev's policies, which led to a situation where independent journalists and other government critics were often attacked in pro-government media, discredited on social networks, publicly condemned by officials, and in some cases prosecute

The onerous multi-million somov compensation fines imposed on the media in relation to claims lodged by the Prosecutor General in defense of the honor and dignity of ex-President Atambayev, and the closure of the opposition television company "September" in 2017 significantly restricted media freedom in Kyrgyzstan, and claims against news agencies, according to UN Assistant Secretary General Andrew Gilmore, "have had a gag effect."<sup>5</sup>

However, President Jeenbekov's official statements and selected improvements in the protection of the right to freedom of expression and the media give reason to hope that he intends to implement the promises made during his election campaign.

However, rather than depend on political will, it is important to put legal safeguards in place which will ensure the protection of these fundamental rights.

### **1) Cancellation of the law requiring the Prosecutor General to turn to court on behalf of the President for the protection of his/her honour and dignity<sup>6</sup>**

A group of lawyers appealed to the Constitutional Chamber of the Supreme Court asking them to rule that Article 4 of the Law on the Activities of the President of the Kyrgyz Republic was unconstitutional. The article requires the Prosecutor General to file lawsuits in court to protect the honour and dignity of the President. The lawyers argued that it thus violates the principle of equality before the law as the head of state has a higher level of protection in civil claims about the protection of honor and dignity.

On 17 October 2018, the Constitutional Chamber issued a decision, recognizing the point of law as partially unconstitutional. According to Article 52 of the Constitutional law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic", the Government is, within four months of a decision of the Constitutional Chamber, required to propose regulatory changes to parliament. In this case this would be changes stipulating that in future the Prosecutor General will require presidential consent before initiating claims in defense of the honor and dignity of the President and regarding the

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3 [http://www.president.kg/ru/novosti/11042\\_prezident\\_sooronbay\\_jeenbekov\\_tolko\\_diktatura\\_zakona\\_sdelat\\_nas\\_ponastoyaschemu\\_svodnyimine\\_byivaet\\_svodnyi\\_bez\\_otvetstvennosti/](http://www.president.kg/ru/novosti/11042_prezident_sooronbay_jeenbekov_tolko_diktatura_zakona_sdelat_nas_ponastoyaschemu_svodnyimine_byivaet_svodnyi_bez_otvetstvennosti/)

4 [kg.akipress.org/news:1442363?f=cp](http://kg.akipress.org/news:1442363?f=cp) <https://24.kg/obschestvo/81287/>

5 <http://www.donors.kg/ru/4421-kyrgyzstan-po-slovam-vysokopostavlennogo-predstavitelya-oon-etnicheskieshinstva-nuzhdayutsya-v-ravnom-obrashchenii#.W3coV-gzblU>

6 Law "On the guarantees of activities of the President of the Republic of Kyrgyzstan" of 18 July 2003 No. 152, article 4.

amount of possible compensation.<sup>7</sup> However, there is no information about the draft law or its progress at the time of writing.

## **2) Overcoming intolerance of criticism; hostile and shameful rhetoric depicting independent media, journalists, human rights defenders and critics of the government as a threat to national security**

In his address to journalists on 7 November 2018 on Information and Press Day, President Jeenbekov affirmed that the media are an essential element of developed civil society, and that he appreciates and “relies on media support in carrying out the reforms aimed at developing the country and ensuring the well-being of Kyrgyzstanis, the fight against corruption in all government bodies”<sup>8</sup>

Moreover, implementation plans for the National Development Strategy of the Kyrgyz Republic for 2018–2040, include provisions to focus on further liberalization of the media, strengthening media independence, political and legal aspects of ensuring freedom of expression, access to objective information and other problems of information development.<sup>9</sup>

## **3) But another independent newspaper threatened with closure**

However, on a negative note, Shaista Shatmanova, the editor of Super-Info, reports that the State Service for Combating Economic Crimes (GSBEP) is seeking to close the newspaper.<sup>10</sup> Shatmanova stated that following a report from a citizen T. Nasykulov to the GSBEP about discrepancies in the declared print runs of the Shambhala and Pyramid Plus newspapers, GSBEP began carrying out extensive checks and initiating proceedings against Super Info, despite there being no mention of “Super Info” in the complaint. Shatmanova explained “Finpol [the nickname for GSBEP] is accusing us under an article, which is punished by terminating activity. They want to close down our newspaper.”<sup>11</sup>

According to Kylichbek Sultan, founder of Super-Info (and ex-ambassador of Kyrgyzstan to South Korea), the GSBEP is carrying out orders of the Presidential office to put pressure on the newspaper: “These are made-up accusations. Such pressure has always been against opposition media. I believe that an order is being sent from the President’s Office to shut us down. This is their response to my allegations of corruption in the Ministry of Foreign Affairs.”<sup>12</sup>

Zhanarbek Akaev, Member of Parliament and former journalist, also believes the incident is an example of pressure from the authorities on the free media: “The security forces should not put pressure on independent media. They apparently think that if they shake us like this, calling for interrogations, we will stop writing the truth about corruption. But [...] the authorities should not be afraid of free media, but rather enlist their support in the fight against corruption.”

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7 The decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic of 17 October 2018 No. 07-R on the case on verification of constitutionality of Article 4 of the Law of the Kyrgyz Republic “On guarantees of the activities of the President of the Kyrgyz Republic” in connection with the appeal of Dzholdoshalieva Bermet Anarbekovna, Alagusheva Ahmad Kirgizbaevich, Alisheva Nadezhda Ivanovna, Usenova Begaim Dzholdoshbekovna, Isaeva Altnai Bakytbekovna.

8 <https://paruskg.info/novosti/158494-prezident-zhjejenbekov-pozdravil-zhurnalistov-strany-s-professionalnym-prazdnikom-dnem-informacii-i-pechati.html>

9 Decree of President of Kyrgyzstan Президента Кыргызской Республики от 31 октября 2018 года УП № 221.

10 <https://kaktus.media/388493>

11 <https://24.kg/obschestvo/112246/>

12 <https://24.kg/obschestvo/112111/>

On 19 March 2019, Pervomaysky District Court of Bishkek satisfied the request of lawyers for Super-Info to cancel two GSBEP decisions to hold tax audits. Shatmanova believes the court decision has helped protect freedom of speech: “The court satisfied our complaint that the rulings issued by the inspector of the financial police were illegal. We think that we made an invaluable contribution to the future of freedom of speech in Kyrgyzstan. We hope that after this, state bodies will stop unreasonably interfering in the work of the media.”<sup>13</sup>

These incidents of state pressure against media outlets against the general background of improvements put in mind statements by Dina Maslova, founder of the Zanoza.kg website, who said that at the beginning of their term, every head of state treats the media well, but after consolidating power, they begin to put pressure on journalists and his opponents through the courts. Maslova therefore considers it is important to build solidarity in the civil and media sectors in order to ensure that “after a while, when the president becomes stronger, he still reckons with us. Otherwise everything will carry on as usual.”<sup>14</sup>

#### **4) Developments regarding persecution of journalists for their professional activities**

On 15 April 2018, the criminal case against journalist Elnura Alkanova was dropped after a court ruling. Alkanova had been facing charges of disclosing confidential banking information in two articles regarding the privatization of elite cottages in the suburb of Bishkek. The articles were published on the website of the Ferghana Information Agency, and they describe financial violations and the possible participation of people close to the former prime minister, with reference to documents of BTA Bank.<sup>15</sup> Alkanova was charged under two articles of the Criminal Code, each of which punishable by imprisonment for up to five years. During the investigation Alkanova had been banned from leaving the country.<sup>16</sup>

On 14 August 2018, the Prosecutor General's Office opened a criminal case against investigators of the State Service for Combating Economic Crimes (GSBEP) for the illegal persecution of Elnura Alkanova (“Knowingly bringing criminal charges against an innocent person”). The criminal case against the representatives of the GSBEP is being investigated by the State Committee for National Security.

## **Recommendations:**

1. Within the framework of the National Development Strategy of the country for 2018-2040, ensure that a legal framework is put in place which will protect freedom of expression and media and strengthen their independence, focus on at the same time on access to information.
2. Put an end to the illegal and arbitrary inspections of media investigating official corruption
3. Based on the decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, make appropriate changes to the law “On guarantees of the activities of the President of the Kyrgyz Republic”, which rescind the obligation of the country's Prosecutor General to initiate lawsuits in defense of the honor and dignity of the President.

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13 <https://rus.azattyk.org/a/kyrgyzstan-super-info-finpol/29831519.html>

14 [https://rus.azattyk.org/a/kyrgyzstan\\_bishkek\\_media/29195125.html](https://rus.azattyk.org/a/kyrgyzstan_bishkek_media/29195125.html)

15 <https://kaktus.media/373768>

16 <https://24.kg/obschestvo/75923/>

## **AZIMJAN ASKAROV REMAINS BEHIND BARS**

In 2016 the United Nations Human Rights Committee issued an opinion stating that human rights defender Azimjan Askarov had been arbitrarily detained, tortured and denied fair trial rights and recommended that the authorities immediately release Askarov, who is serving a life sentence. In early April 2018, Azimjan Askarov's wife Khadicha Askarova appealed to President Jeenbekov to send her husband's case and the cases of the seven people convicted with him for independent examination. In March 2019, Khadicha Askarova again requested President Jeenbekov to pay attention to her husband's case, as a victim of torture. Her appeal was supported by the lawyer of the convicted human rights activist and the head of the human rights center "Bir Duino" Toleskan Ismailova.

On 16th November 2018, Brigitte Dufour, IPHR Director, visited Azimjan Askarov in a pre-trial detention center in Bishkek. In the room where the meeting took place, Askarov stood behind bars forming a cage. Askarov expressed his humiliation at having to meet in such conditions, as well as his frustration and deep feelings of injustice after almost nine years of imprisonment with seemingly no prospect of being reunited with his family in his old age.

## **Recommendations:**

4. Immediately and unconditionally release human rights defender Azimjan Askarov from detention in line with the opinion of the UN Human Rights Committee of 2016.

## **ANTI-DISCRIMINATION INITIATIVES**

Persons with disabilities are among the most vulnerable groups in Kyrgyzstan, with limited access to basic services such as education and employment, a situation that is exacerbated in rural areas. Women and girls with disabilities are subject to multiple forms of discrimination putting them at particular risk of poverty. On a positive note, on 14th March 2019, President Jeenbekov signed into law Kyrgyzstan's ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

Discrimination is also a significant issue for members of ethnic minority groups in Kyrgyzstan. Following the 2010 ethnic clashes in Southern Kyrgyzstan the authorities failed to implement an effective programme of tolerance building and reconciliation between the majority ethnic Kyrgyz population and the ethnic Uzbeks and other ethnic minorities. Thus tensions, discriminatory attitudes, racial stereotypes, suspicion, widespread nationalistic discourse and exclusion persist.

In 2018 the State Agency for Local Government and Interethnic Relations developed the "Civil Integration Concept of the Kyrgyz citizen" aimed, in part, at facilitating equal and active participation of all ethnic groups in the life of the country, at strengthening tolerance and respect for diversity among all citizens and at promoting a national civil identity to foster social integration. The authorities are currently developing an action plan to implement the concluding observations issued to Kyrgyzstan by the UN Committee on the Elimination of Racial Discrimination.

A draft law on anti-discrimination was introduced in Parliament in May 2017, but included weak provisions that are not in line with Kyrgyzstan's obligations under international human rights law. Therefore, in March 2018 it was withdrawn for further discussion with the input of international equality rights experts. In a welcome move, on 28 January 2019 the government began drawing up an action plan on the implementation of recommendations issued by the United Nations (UN) Committee on the Elimination of Racial Discrimination in 2018.

## Recommendations:

5. Ensure that the new draft law on the anti-discrimination legislation is in line with international standards and provides sufficient legal and practical safeguards to all minority groups

### TORTURE AND ILL-TREATMENT

Kyrgyzstan is a party to all UN treaties on the prohibition and prevention of torture and ill-treatment and these agreements have been integrated into national law.<sup>17</sup> In 2003, torture was criminalized in domestic legislation. As part of measures to improve justice, 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.<sup>18</sup>

In 2012, a National Prevention Mechanism (NPM) was created, the functions of which were assigned to a new state body - the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NCTP), which to date has carried out over 4,000 preventive visits to prisons and other places of deprivation of liberty across Kyrgyzstan.

In October 2014, the government adopted an Action Plan to combat torture<sup>19</sup> and implementation is underway through cooperation between government agencies, international and local non-governmental organizations, including the Coalition against Torture.

However, despite the above measures, the practice of torture by law enforcement officials continues, and impunity for torture is the norm. This is evidenced by reports from bodies such as the Ombudsman, the NCTP and the research of the Coalition against Torture.

#### 1) Prevalence of torture and ill-treatment

In 2018, a joint study by the Coalition against Torture and the NCTP to assess torture and ill-treatment of persons detained in remand prisons (SIZOs) throughout 2017 found that one in three of the 679 respondents (30.2%) stated that they had been subjected to unjustified physical force or violence during arrest and detention, figures which undoubtedly show the prevalence of torture in Kyrgyzstan<sup>20</sup>

For the period 2016-2018, the General Prosecutor's Office registered 1,230 allegations of torture and ill-treatment, of which 435 in 2016, 418 in 2017, and 377 in 2018 (see chart 1 below).<sup>21</sup> This indicates a 13 per cent decrease between 2016 and 2018 in complaints of torture. A reduction in the number of complaints of torture has also been noted by the Coalition against Torture: in 2016 the Coalition received 59 complaints of torture, in 2017 – 43, and in 2018 – 38 complaints (see chart 2). This indicates a nearly 36 per cent decrease in complaints received by the Coalition between 2016 and 2018. The root causes of this decrease still need to be established in full but initial indications from research by Coalition against Torture show that most torture victims still do not believe that their complaints will be promptly, impartially and fully investigated, and the alleged perpetrators will be brought to justice.

17 Constitution of Republic of Kyrgyzstan Article 6 part .3.

18 Law "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"

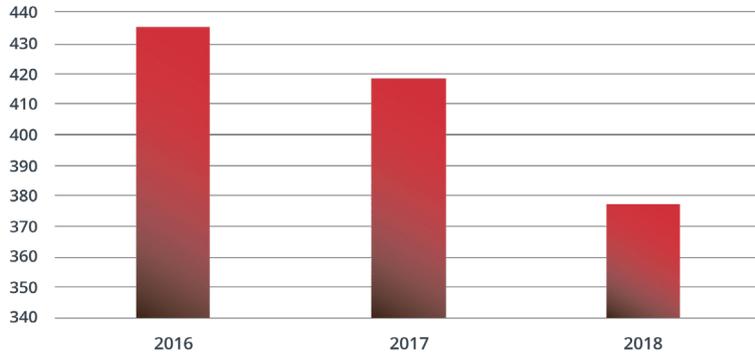
19 Approved by Governmental Order of October 23, 2014. №469-p.

20 Report on the determination of the index of torture in IVS and SIZOs in the Kyrgyz Republic, Bishkek, 2018, p.16.

21 Official responses of the Prosecutor General's Office for requests from the Secretariat of the Coalition against Torture in Kyrgyzstan.

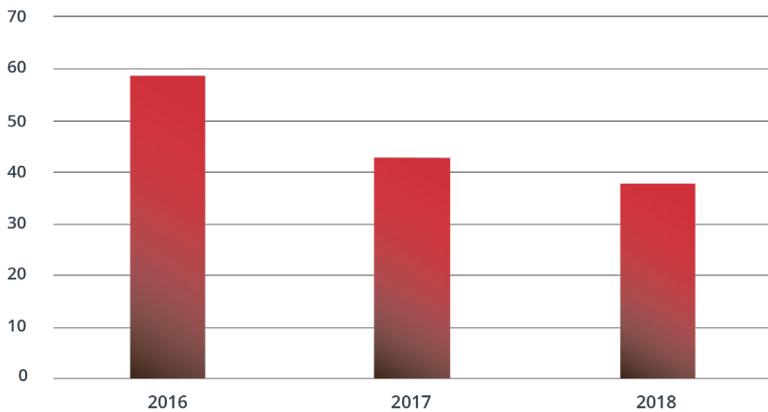
## Chart 1

allegations of torture and ill-treatment registered by  
General Prosecutor's Office  
2016-2018



## Chart 2

complaints of torture noted by the  
Coalition against Torture  
2016-2018



The Coalition against Torture monitoring of closed institutions in 2018 showed that detention conditions equate to inhuman and degrading treatment, and the state has not taken effective measures to improve the situation, nor to provide for elementary conditions of detention.

During the monitoring, more than 300 cases were found when defendants were not transferred to SIZOs directly after the court ruled to detain them pending trial, but were instead illegally detained in temporary detention facilities (IVS) cells in inhuman and degrading conditions. The police argue that due to lack of resources they are not able to ensure the timely transfer of persons from the ITT to the SIZO, but this is not justification for a violation of law, which can cause significant harm to the rights and interests of those detained in custody pending trial.

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. For example, according to Ministry of Internal Affairs information from 2016 to September 2018, 10 detainees, four administrative detainees and one other person died in "temporary detention facilities (IVS)" and in duty units.

## 2) Lack of effective investigative mechanisms and impunity for torture

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 go unpunished. Official statistics from the General Prosecutor's Office show that in nine out of ten cases a decision is taken in refusing to initiate a criminal case into an allegation of torture or ill-treatment.

From 2010 to 2018 only 14 law enforcement officials were convicted under the article providing punishment for torture.

**Table 1. Official statistics from the Prosecutor General's Office**

№	Position	Period		
		2016	2017	2018
2.	Refusal to initiate a criminal case	400 (91,9%)	383 (91,6%)	350 (92,8%)

According to NCPT statistics collated since it was established, prosecutors' office have opened criminal cases into only 28 cases of torture and ill-treatment, or in 3 percent of the complaints the NCPT referred to them.

One of the key causes of impunity is the existing system of investigating torture complaints. The lack of comprehensive, effective, expeditious and impartial investigative mechanisms remains the main obstacle faced by victims of torture in accessing justice. The lack of an effective investigation mechanism results in the failure to bring perpetrators to justice and impose punishment commensurate with the severity of the crime, and also a failure to award compensation.

Currently, allegations of torture are considered by the State Committee for National Security (SNCS), whose work is often kept confidential. Research additionally shows that the SNCS has a shortage of trained personnel with specialist knowledge and experience of investigating torture allegations. In addition, the SNCS is a multi-purpose agency, responsible for both law enforcement functions and those of secret services. Therefore, conflicts of interest inevitably arise when conducting inspections and investigating allegations of torture and ill-treatment allegedly committed by law enforcement agencies.

The principle of independence and effectiveness also means that the findings of an investigation into torture complaints should not be based exclusively on testimony and explanations of the officer accused of the abuses. Nevertheless, the system of confession-based evidence being used most often in criminal cases persists, and this practice is still encouraged by courts who rely to too greater extent on confessions when evaluating evidence.

As a result, in nine out of ten cases of torture, police officers have used torture or ill-treatment to coerce a detainee to confess to a crime, thereby "solving the crime". The percentage of crimes solved remains an important indicator by which the performance of the law enforcement office and the unit in which he/she works is measured.

"In the absolute majority of cases (94%), torture is used by operative officers of the internal affairs bodies in order to extract confessions." National Centre for the Prevention of Torture, Annual report 2016.<sup>22</sup>

If during the trial, a defendant claims that he/she was forced to confess after being tortured, courts persist in either ignoring such statements or carrying out a superficial investigation, simply by questioning the police officer in court. Such ingrained court practice makes it difficult to combat torture and impunity effectively

### 3) Documenting torture

According to Coalition against Torture monitoring, the most commonly used methods of torture are: asphyxiation with a plastic bag or gas mask; beatings with punches and batons; the use of electric shocks; the introduction of foreign objects into the anus or the threat of rape.

The crime of “torture”, as a rule, is committed in the absence of witnesses, meaning that medical evidence plays an important role in securing redress. Medical examinations should therefore be timely and of high quality. However, the lack of an effective and timely system for documenting the injuries caused by torture and ill-treatment, as well as the lack of unified standards for medical examinations of victims of torture, makes it difficult to investigate and prosecute those responsible for torture

In order to provide practical assistance to law enforcement agencies on the effective documentation of torture and to improve protection against torture, in 2014 the Ministry of Health developed Practical Guidelines for the medical documentation of violence, torture and other cruel, inhuman and degrading treatment and punishment. The document is based on the principles of the Istanbul Protocol.<sup>23</sup>

Although the guidelines are intended for all medical workers in Kyrgyzstan, regardless of the level and departmental affiliation of the health organization, in practice they are only used in organizations subordinate to the Ministry of Health, which is chaotic and uncontrolled. The vast majority of medical personnel have not yet been trained on how to assess and document cases of torture and ill-treatment and medical professionals in services subordinate to law enforcement agencies, do not apply the guidelines at all. For example, in 2018 Kuldashev Bakhtiyar and Davlatov Almaz made complaints about torture at the hands of law enforcement officials but due to the failure of doctors to conduct preliminary medical examinations in a timely manner according to the principles of the Istanbul Protocol the prosecutor’s office refused to open a criminal investigation into their complaints.

### 4) Implementation of decisions of international human rights bodies

Despite the fact that the Government is responsible for the consideration of individual complaints and decisions of the UN human rights treaty bodies, no substantive measures have yet been taken in response to the 14 UN HRC opinions issued in relation to Kyrgyzstan.<sup>24</sup> In all 14 opinions the UN HRC found violations of rights protected under the ICCPR. Not one decision has been fully implemented to date.

For example: in 2016, the HRC established a violation of the right to freedom from torture of the human rights activist Azimzhan Askarov who is serving a life sentence and recommended that he was released. To date, Kyrgyzstan has failed to implement recommendation.

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23 Guidance for effective documentation of violence, torture and other cruel and degrading treatment and punishment. Approved by order of the Ministry of Health of the Kyrgyz Republic on 9 December 2014 No. 649. The Order of the Ministry of Health of the Kyrgyz Republic of 7 December 2015 approved the second edition of the Practical Guidelines for the effective documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment.

24 Regulation “On the Issues of Interaction of State Bodies on Consideration of Communications and Decisions of the UN Human Rights Treaty Bodies” was approved by the Decree of the Government of the Kyrgyz Republic of 8 November 2017 No. 731.

A key legal obligation in the implementation of HRC decisions where a violation is recognized is the payment of fair compensation to the victim.

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) and Tashkenbay Moidunov v. Kyrgyzstan (No. 1756/2008 dated 24 August 2011). However, the amounts of compensation awarded by the courts of \$ 2,800 for each claim are inadequate in relation to the seriousness of the human rights violations suffered by the victims and thus do not meet the criteria of reasonableness and fairness.

## Recommendations

1. Ensure that investigations into allegations of torture are carried out by an independent body, that preliminary investigations into complaints of torture are carried out and completed without delay upon receipt of a complaint;
2. Ensure that, for the duration of such investigations, the official allegedly responsible for torture are suspended from their official duties;
3. Ensure strict observance of the rule of exclusion of evidence in all cases where the accused claims to have been obtained through torture.
4. When evaluating the activities of police officers apply assessment criteria which do not encourage the police to focus on the percentage of crime resolution, exclude from the assessment criteria indicators relating to "crime resolution";
5. Ensure strict compliance with national and international standards for the treatment of detainees, with particular emphasis on respect for the right to be free from torture and ill-treatment; react to each report of a violation and organize an objective check on each appeal;
6. Train staff in places of detention about the human rights obligations of Kyrgyzstan to ensure and protect human rights in the framework of human rights treaties;
7. Eliminate the practice of illegal detention in the temporary detention facilities of suspects due to problems with transfer to the SIZO. For each violation of this identify the official responsible;
8. Intensify measures for the actual and full implementation of Practical Guidelines for the effective documentation of violence, torture and other cruel, inhuman or degrading treatment or punishment in the practice of medical professionals at all levels of health and in the field of medical services of law enforcement agencies and their territorial divisions;
9. Ensure compliance with international standards by state and non-state experts to ensure uniformity of forensic medical evaluations and reports;
10. Include in the criminal procedural law a provision obliging the investigating authorities and the court to accept evidence from expert examinations conducted by national and international non-state experts;
11. To ensure the independence of state judicial expert services and to increase the capacity of independent, non-state expert services.