



UPR Submission

Kyrgyzstan

November 2009

Summary

This submission highlights several key areas of concern regarding Kyrgyzstan's compliance with its international human rights obligations, including the right to a fair trial; torture and inhuman and degrading treatment in detention; the right to freedom of association and assembly; the right to freedom of expression, the rights of women, and the right to access to controlled medicines. Human Rights Watch is aware that there are serious problems in other areas as well but we have limited our contribution to those issues our work has focused on in the past few years.

Torture and Ill- Treatment and the Right to a Fair Trial

On April 14, 2008, Kyrgyzstan ratified the Optional Protocol to the Convention against Torture. Despite this welcome step, Kyrgyz human rights organizations working on detainees' rights issues report that torture and ill-treatment of detainees remain pervasive. The events that took place in Nookat (a town in southern Kyrgyzstan) in 2008 are a stark illustration of this.

On October 1, 2008 some Nookat residents held a protest following the authorities' refusal to allow a public celebration marking the end of Ramadan. Accounts vary as to the number of protesters and the conduct of the protest. Riot police brought in from Osh dispersed the protest after protesters threw stones at the municipality building.

In the following days, police arrested several dozen people who were initially charged with organizing or participating in mass unrest, but against whom authorities added other charges.

At their trial, 30 of the 32 defendants testified that they had been tortured and ill-treated, but the judge neither ordered an investigation of the allegations nor dismissed the evidence defendants said had been obtained under torture. The defendants received prison terms ranging from nine to 20 years.

A commission established by the Kyrgyz ombudsman concluded in February 2009 based on court material and interviews with the defendants, their lawyers and relatives, that most of the defendants were ill-treated or tortured during their arrest and in pre-trial detention. A report by the Russian human rights organization Memorial, published in January 2009, documented similar violations.

Kyrgyz human rights groups have also criticized the lack of fair-trial standards and the unusually harsh sentences. The first two trial hearings were closed. According to the reports noted above, several lawyers complained that they did not have access to court materials, and relatives were not informed about the detention of their family members.

In May 2009, Kyrgyzstan's Supreme Court reviewed the case and upheld the verdicts. It did not investigate the defendants' torture allegations.

We are aware of a number of additional cases from summer 2009 against people accused of extremist or terrorist activities, all involving arbitrary detention and restrictions on access to legal counsel. These cases are still pending.¹

Freedom of Association and Assembly and Functioning of Civil Society

In early 2009 Kyrgyzstan's civil society was shaken by draft amendments to the laws regulating nongovernmental organizations (NGOs). The proposed amendments outlined new, arbitrary terms for rejecting NGO registration applications, imposed onerous reporting requirements for NGOs, forbade NGOs from engaging in "political" activities, and set out a new regime of government inspections and warnings against NGOs. As drafted, the proposed amendments would have unreasonably restricted freedom of expression and association enshrined in the Constitution of the Kyrgyz Republic and in international law.

Taken together, the proposed amendments would have created burdensome bureaucratic requirements for NGOs, hindering the free operation of NGOs, narrowed the space for civil society, and undermined NGOs' ability to facilitate checks on government conduct. The burdens would have been acutely felt by smaller NGOs, which would have had fewer resources to fulfill this and other reporting requirements and therefore fewer resources to focus on substantive work. When viewed in the context of the worsening climate for human rights that has developed in Kyrgyzstan, the proposed amendments seemed intended to stifle Kyrgyzstan's vibrant civil society.

After public outcry, the secretariat of the presidential administration recommended that parliament postpone its hearing of the draft amendments. To date, no new versions of the draft law have been introduced in parliament. However, Human Rights Watch is concerned that some iteration of the draft described above might be reintroduced in parliament as international attention to the problem fades.

Freedom of Expression

Violence and harassment of journalists in Kyrgyzstan increased significantly in the run-up to the July 2009 presidential elections. It was not always clear if specific journalists were targeted because of their work or were victims of common crime. Yet the attacks served to intimidate other journalists. In a number of these cases the perpetrators have not been identified or held accountable.

According to Reporter without Borders, six journalists were physically attacked in Kyrgyzstan in the first six months of 2009. On March 3, Syrgak Abdylidaev of the

¹ Human Rights Watch interview with Aziza Abdurasulova, NGO Kylum Shamy, Bishkek, 16 September 2009 and email exchange with Dmitry Kabak, Bishkek.

independent weekly *Reporter Bishkek* was severely beaten near his apartment and stabbed more than 20 times. In summer 2009, he fled the country because of ongoing harassment. Four days later, Bahadyr Kenzhebaev, a television cameraman, was severely beaten on his way home from work in Osh. On March 26, Ulugbek Babakulov, the editor in chief of the weekly *Moskovskiy Komsomolets-Kyrgyzstan* and his colleague Yelena Ageeva were severely beaten and robbed by two unknown attackers in Bishkek, causing Babakulov to be hospitalized. On June 5, Abduvakhob Moniev, a journalist with the opposition weekly *Achyg Sayasat* (Open Politics), was beaten by an unknown assailant in Bishkek. In early April the prosecutor's office had summoned several journalists from the newspaper warning them "not to insult or offend the president" after it had published a number of articles criticizing government officials.

In 2008 the editors of two opposition newspapers, *De Facto* and *Alibi*, were prosecuted on charges that they had libeled the president's nephew. They were first sentenced in June 2008 to a prohibitively high fine of 1 million Kyrgyz soms (US\$28,500) each, and then criminally prosecuted for not paying the fine. As a result, *Alibi* editor Babyrbek Jeenbekov was detained for two days in early September 2008, while *De Facto* editor Cholpon Orozbekova fled the country. On June 14, 2008 police raided the *De Facto* offices, confiscated its financial records and computers, and sealed the newsroom as part of a separate criminal investigation into allegations that a letter the newspaper had published about official corruption amounted to a "knowingly false denunciation." Both newspapers ultimately closed down.

Rights of Women

The government of Kyrgyzstan does not adequately prevent and punish domestic violence and bride kidnapping, the subject of a detailed report Human Rights Watch published in 2006. Thousands of women in Kyrgyzstan are isolated in their homes, beaten, humiliated, raped, and sometimes killed, generally with impunity. Despite a very progressive 2003 law on domestic violence, police, local authorities and the courts fail to effectively intervene in cases of domestic violence.

The Kyrgyz government has yet to acknowledge the scope of the violence against women in the country. Although both kidnapping and domestic violence are illegal in Kyrgyzstan,² large numbers of women and girls continue to experience these violations of their rights.

According to Kyrgyzstan's women's rights groups that provide services to victims of domestic violence and bride kidnapping, and other gender experts, the lack of political will is the main barrier to the effective implementation of the law on domestic violence and its related bylaws. In addition, there is insufficient and inconsistent collection of relevant statistics and uneven and at times poor training and awareness on domestic violence on the part of law enforcement bodies. Unsurprisingly, protective orders, one of the key features of the 2003 law, are not enforced.

² Article 155 of the Criminal Code outlaws non-consensual marriage by abduction. It says: "Forcing a woman to marry or to continue a marriage or kidnapping her in order to marry without her consent" will be punished under the law. The prescribed penalty is a fine in the amount of 100 to 200 times the minimum monthly wage or up to five years in prison.

Kyrgyzstan's third periodic report to CEDAW, submitted in March 2007, lists a number of activities that were undertaken to respond to domestic violence in the last several years. Yet, a closer look reveals that the majority of these activities were initiated and implemented by international organizations or civil society groups. The role of the Kyrgyz government and authorities is limited to participation in roundtables and workshops.³ While the government's participation in these activities is welcome, it is completely inadequate to actively promote and protect women from domestic violence.

During its review of Kyrgyzstan in November 2008 CEDAW raised serious concern about widespread domestic violence in Kyrgyzstan. It requested that the government submit information within one year on measures taken to eliminate violence against women and bride abduction.⁴ As of this writing the government has not submitted such information and has taken no new steps to prevent such violence or punish perpetrators.

The Rights of Lesbians, Bi-Sexual Women, and Transgender Men⁵

Women who are attracted to other women, or who violate rigid gender roles defining how a woman should look or behave, experience discrimination as a result of their sexual orientation or gender identity, including in the form of violent physical assaults. Moreover, the government ignores their needs—and denies their very existence.

Lesbians, bi-sexual women, and transgender men face violence, rape, psychological abuse, and confinement and stigmatization in Kyrgyzstan. Abuses may happen at the hands of strangers or family members. Social prejudice and silence mean that survivors find little practical hope of government protection. Police themselves sometimes abuse lesbian and bisexual women and transgender men, and harass organizations that defend their basic rights.

The Kyrgyz government's response to violence against women will be incomplete until it recognizes the human rights of people facing abuses because of their sexual orientation or gender identity.

Access to Controlled Medicines

In its resolution 12/24 on "Access to medicine in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," the Human Rights Council encouraged states to consider including in their national reports to the UPR mechanism information on measures taken to promote access to medicines.

Kyrgyzstan's low consumption of morphine and other opioid medicines, reported annually to the International Narcotics Control Board, indicates that access to medicine for pain treatment is very limited.⁶ Although morphine is safe, effective and inexpensive,

³ Government of Kyrgyzstan, Third Periodic Report to the Committee on the Elimination of Discrimination against Women, CEDAW/C/KGZ/3, 2 March 2007, page 22–26.

⁴ United Nations Committee on the Elimination of Discrimination against Women, "Concluding Observations Kyrgyzstan", CEDAW/C/KGZ/CO/3, 14 November 2008, para. 50.

⁵ This submission contains information only about lesbians, bi-sexual women, and transgender men because that was the focus of Human Rights Watch's research. Because Human Rights Watch has not carried out research on discrimination and harassment against gay men, these issues are not addressed in the current submission.

⁶ International Narcotics Control Board, *Narcotic Drugs: Estimated World Requirements for 2009 – Statistics for 2007*, E/F/S.09.XI.02 (New York: United Nations, 2009), pp. 233, 260.

Kyrgyzstan's consumption of morphine and alternative strong opioid medicines is sufficient to provide pain treatment to less than half of its terminal cancer patients.⁷ As these medicines are also used for opioid substitution therapy (OST) and to provide pain treatment for non-terminal cancer patients, people living with HIV/AIDS and patients with pain from surgery, injuries and other diseases, an estimate can be made that each year, thousands of people suffer from untreated moderate to severe pain.

Access to controlled medicines is also vital for OST for the treatment of people who are dependent on opiates and the prevention of HIV among injecting drug users. Human Rights Watch welcomes recent statements of the Kyrgyz government that harm reduction, including OST, is a high-priority strategy in treating drug dependence and preventing HIV/AIDS, including in prisons.⁸ The International Harm Reduction Association notes that Kyrgyzstan's harm reduction response is "one of the most developed in Eastern Europe and Central Asia," although buprenorphine, an alternative to methadone for OST on the WHO's List of Essential Medicines, remains unavailable.⁹

Recommendations

Regarding the right to a fair trial and problems with degrading and inhuman treatment and torture in detention, the Kyrgyz government should be urged to:

- Ensure that allegations of torture and inhuman and degrading treatment are investigated promptly and efficiently and that perpetrators are brought to justice.
- Reopen proceedings related to the "Nookat events" to investigate torture allegations, hold perpetrators accountable, and remove from evidence any testimony found to have been coerced under torture.

Regarding the functioning of civil society, the Kyrgyz government should be urged to:

- Ensure that any new law or regulation on NGOs conforms to the Kyrgyz Republic's international human rights obligations on freedom of association.
- Ensure that Kyrgyz NGOs have the opportunity to provide input to any new draft amendments and that their recommendations will be given due consideration.

⁷ One authoritative study estimates that 80 percent of terminal cancer patients will have moderate to severe pain, requiring treatment with 60 to 75 milligrams of morphine per day, or an equivalent dose of another opioid, for an average of 90 days (K. M. Foley, et al., "Pain Control for People with Cancer and AIDS," in *Disease Control Priorities in Developing Countries*, 2nd ed., (New York: Oxford University Press, 2003), 981-994). Using WHO cancer mortality statistics, Human Rights Watch calculates that in 2007, all of the morphine, methadone and fentanyl consumed in Kyrgyzstan was sufficient to provide adequate treatment to about 45% of about 5500 terminal cancer patients.

⁸ "Statement of the delegation of the Kyrgyz Republic at the 52nd Session of the UN Commission on Narcotic Drugs (March 11-12, 2009)," reproduced by Eurasian Harm Reduction Network http://www.harm-reduction.org/images/stories/documents/links/kyrgyz_statement_eng.doc (accessed October 26, 2009).

⁹ C. Cook and N. Kanaef, *The Global State of Harm Reduction in 2008*, pp 38-39; WHO, *Model List of Essential Medicines*, 15th List, March 2007, p. 25.

- Encourage the parliament to submit any future draft amendments on the NGO law to the OSCE Office for Democratic Institutions and Human Rights and the Council of Europe's Venice Commission for review and comments and to reflect comments received in the review of the current legislation.

Regarding freedom of expression, the Kyrgyz government should be urged to:

- Thoroughly investigate all attacks on journalists and not tolerating an atmosphere of harassment and threats.

Regarding the rights of women, the Kyrgyz government should be urged to:

- Issue a clear statement at the highest political level that prevention of domestic violence is a priority policy issue and to develop a more effective state response to domestic violence and bride kidnapping.
- Assure all public officials dealing with domestic violence that they have the full and unreserved support of the government.
- Reinstate the Secretariat of the National Council on Women, Family, and Gender Development or establish another governmental coordination body or agency dealing with gender issues, including domestic violence, and give it adequate authority, mandate and resources to ensure the enforcement of relevant laws.

Regarding the rights of lesbians, bi-sexual women, and transgender men, the Kyrgyz government should be urged to:

- Publicly reaffirm that all people in Kyrgyzstan have the right to live free from discrimination and violence based on their sexual identity and that any acts to the contrary are illegal and will be prosecuted.

Regarding the right to access to controlled medicine, the Kyrgyz government should be urged to:

- Examine the reasons for its inadequate consumption of opioid medicines for pain treatment and develop a plan of action to improve access.