

**The “Golos Svobody,” the “Spravedlivost”, the “Advocacy Center on Human Rights”  
JOINT SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW OF  
KYRGYZSTAN**

**United Nations Human Rights Council Universal Periodic Review  
8th Session, 3-14 May 2010**

The Golos Svobody, the Spravedlivost, (the Network of Human Rights Defenders), the Advocacy Center on Human Rights welcomes this opportunity to present their joint submission to the Universal Periodic Review (UPR) of the Kyrgyz Republic. The following submission addresses **VIOLATIONS OF THE PROHIBITION ON TORTURE** and includes recommendations to the Government. We urge the Working Group of the UPR to examine Kyrgyzstan’s record on torture and to ensure that the following recommendations are reflected in the outcome document.

In particular, we urge the Working Group of the UPR to ensure that the UPR addresses:

- the lack of effective safeguards against torture, cruel, inhuman or degrading treatment (for simplicity, referred to herein as “torture” unless otherwise indicated) , including the state’s failure to (1) maintain proper custody records of those deprived of their liberty, (2) observe the right of detainees to timely access a lawyer and/or doctor, and (3) notify a detainee’s family members his or her detention;
- the need for an effective mechanism for investigation of complaints of torture and deaths in custody, and the importance of holding perpetrators accountable for acts of torture;
- courts’ unlawful admission of evidence obtained by means of torture;
- the lack of adequate access to compensation for victims of torture.

| Kyrgyzstan criminalized torture -in 2003, but the police continue to torture and mistreat people in detention with impunity. Since March 2007 the Network of Human Rights Defenders has received reports from victims and their relatives of more than 200 cases of torture and cruel treatment, 92 percent of them allegedly committed by the police. The Network reported dozens of torture allegations to prosecutors’ offices around the country, but to date there has not been a single guilty verdict for the crime of torture.

Lack of accountability for torture is compounded by the system for evaluation of police officers’ performance, which is based on the percentage of cases resolved and sent to courts. Such a system rewards the police for solving cases at any cost, creating an additional incentive to use torture.

**Insufficient safeguards against torture and unofficial custody:**

Police often fail to register suspects at the time of apprehension, keeping them in unregistered custody for hours or even days. During this unaccounted-for period of time, suspects can be held in unofficial detention settings, such as police vehicles or office rooms, without any access to the outside world, including counsel and relatives.

The police officers practice so-called “conversations” with possible suspects or witnesses. This involves inviting a person to the police station without making a record of the time and purpose of their visit, and often holding a person incommunicado for an unlimited period. These individuals do not have the rights that are provided by criminal procedural law to suspects or accused. Often, the person is then tortured, resulting in a signed confession and/or serious health problems, sometimes even death.

### **1. Use of evidence obtained through torture:**

Although Kyrgyz law prohibits the use of evidence obtained under torture, in most cases courts in Kyrgyzstan do not comply with this requirement. Kyrgyz law also states that a confession alone cannot be the basis for criminal prosecution. However, the police often try to obtain a self-incriminating statement and/or a confession in the beginning of the case. The courts encourage this practice by giving undue weight to confessions when evaluating evidence. If a defendant claims during trial that the confession, signed during the police investigation, was obtained through torture, the courts either ignore such statements altogether or undertake a superficial inquiry. The inquiry usually involves simple questioning of the police officers in court. After the officers deny the use of torture, the judge concludes that the defendant’s allegations are not substantiated and should be treated as an effort to avoid justice.

### **2. Impunity for torturers and lack of remedies for victims of torture:**

The investigation of torture complaints in Kyrgyzstan fails to meet international legal standards of promptness, impartiality, and thoroughness. Torture is classified as a “minor crime” under the Kyrgyz law with punishment not corresponding to the gravity of the offense.

Complaints of torture victims are not properly admitted and registered—a problem that is particularly worrisome for inmates in penitentiary institutions. Complaints against the police are usually sent for preliminary inquiry to the police unit responsible for internal investigation. Victims are not given an opportunity to inform the investigation or present any evidence. As a rule, the required medical examination of the victim is delayed until the victim’s wounds have healed. Only results of official forensic medical examinations are accepted by the courts; the defense does not have right to order such an examination, and may only request an investigator or a judge to make the order. The preliminary inquiry usually ends with a conclusion that the allegations of torture and ill-treatment have not been substantiated and do not merit a full-scale criminal investigation. Victims are not allowed to review the report of the preliminary inquiry, making it virtually impossible for them to successfully appeal its findings. The rare criminal investigation of a torture allegation is conducted in a cursory manner. Charges are generally brought not for torture, but for other crimes of less gravity, such as negligence.

Kyrgyz law does not allow the torture victims to obtain redress from a civil court until a criminal court has convicted the perpetrators of torture. Since the criminalization of torture in 2003, no victim of torture has received monetary compensation.

### **3. Deaths in custody**

Lack of accountability for deaths in custody is the norm in Kyrgyzstan. Contrary to international law and jurisprudence, Kyrgyz law does not provide for a reversed burden of proof in case of a death in custody. In most cases, the police claim that the death was a suicide, or of natural causes, and these explanations are accepted by the investigative and judicial authorities. The police often pressure relatives of the victim to withdraw their complaints or to settle and have the case closed.

### **4. Insufficient mechanisms for monitoring detention locations.**

On April 14, 2008, Kyrgyzstan ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT.) Despite this welcome move, the access to the detention locations of the independent monitors is still rare, sporadic and at full discretion of the law-enforcement bodies. In October 2009, a new body to provide civil oversight over law-enforcement was established; it remains to be seen whether it will be allowed to effectively operate and access all detention locations.

### **5. Example of cruelty and lack of accountability for torture: “Nookat events.”**

The Special Commission under the Ombudsman of the Kyrgyz Republic (the Commission) reported the torture of 32 individuals, including women and children, following the October, 2008 Nookat protests in southern Kyrgyzstan. The defendants had been sentenced to terms ranging from 5 to 17 years of imprisonment after an unfair trial, unusually harsh sentence for protesting. The government failed to conduct an effective investigation into the Commission’s findings.

Each of 32 individuals was accused and convicted of seven crimes, including riots, separatism, and incitement to change the constitutional regime. The protests started when the government suddenly prohibited a previously announced religious celebration for Eid al-Fitr. After the protests, the police arrested dozens of people, claiming they were Islamic "extremists," and tortured them. The officers poured hot and cold water on detainees, beat them on the soles of their feet, and semi-suffocated them using plastic bags or gas masks. Detainees, including a pregnant woman, also had to stand in their underwear in a cold room with their feet in water for up to three days, were not allowed to use sanitary facilities, and did not receive needed medical treatment. The police forcibly poured vodka into the mouths of detainees, many of whom were practicing Muslims. Minors were subjected to electroshock; two women’s heads were shaved bald; a pregnant woman was also forced to carry heavy objects, causing a miscarriage or her pregnancy in November of 2008. At their trial, the defendants testified about torture and ill-treatment, but the judge neither urged the

prosecutor's office to investigate the allegations nor dismissed the evidence that defendants claimed had been obtained under torture.

### **Recommendations:**

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- 1) Guarantee criminal procedural rights upon apprehension:
  - Amend the criminal procedure code to guarantee the rights of individuals during apprehension (factual deprivation of liberty), regardless of their formal recognition as a suspect or defendant.
  - The law must guarantee access to the lawyer and the ability to contact family, as well as the right to remain silent from the moment of factual apprehension—not from the moment of official registration.
  
- 2) Ensure effective investigation of all torture complaints:
  - Establish an effective and independent mechanism for investigating complaints of torture in compliance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
  - Ensure that the alleged victims and their representatives have access to the investigation of their complaints, and can pose questions and provide evidence.
  - Establish an independent forensic medical expertise service.
  - Ensure that the newly created body of the civil oversight of law-enforcement receives full cooperation from all the law enforcement bodies and has unimpeded access to detention facilities.
  
- 3) Ensure that evidence obtained under torture is not accepted as evidence by the courts:
  - Courts should be obliged to carefully investigate defendants' allegations of torture;
  - The burden of proof should lie with the prosecution to establish that all statements made by the defendant were made in full knowledge of his rights and on a voluntary basis, before such statements are admitted into evidence;
  - Statements made by defendants prior to trial should not have evidentiary value unless supported by other facts in the case;
  - In particular, the authorities should conduct a prompt, effective investigation of torture allegations registered by the Commission under the Ombudsman, of individuals convicted after so-called "Nookat events," and conduct new investigations of all cases where evidence was obtained under torture.
  
- 4) Amend the system of evaluation of police performance to ensure that solving crimes is not used as the main criteria.
  
- 5) Ensure effective monitoring of the detention locations:

- Establish an effective mechanism for monitoring prisons and all places of detention including investigation cells of the Committee for National Security and temporary detention facilities of the Ministry of Internal Affairs.
  - In cooperation with human rights organizations establish an effective national preventive mechanism under the Optional Protocol to the Convention against Torture and other forms of Cruel, Inhuman, and Degrading Treatment or Punishment (OPCAT.)
  - Abolish unacknowledged custodies by introducing strict regulations of registration, or technical devices, such as video monitoring of police stations.
- 6) Ensure an explicit right of victims of torture to seek redress in civil courts regardless of whether any perpetrator was convicted of torture in a criminal trial.
- 7) Prevent and duly investigate all cases of death in custody:
- In accordance with international standards, amend legislation and practice to place the burden of proof with government officials to prove beyond a reasonable doubt that the person died of natural causes, and that all possible actions were taken to prevent the death.
- 8) Ensure punishment for acts of torture that corresponds to the gravity of the crime, and the responsibility of the respective perpetrator(s).