



KYRGYZSTAN

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

**35TH SESSION OF THE UPR WORKING GROUP, 20-31 JANUARY
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FOLLOW-UP TO THE PREVIOUS REVIEW

During its second UPR in January 2015, Kyrgyzstan accepted 139 and rejected 28 of the 196 recommendations made to it by other states.¹

Rights of people with disabilities

Kyrgyzstan has acted on six recommendations concerning the ratification of the Convention on the Rights of People with Disabilities (CRPD).² Please see also below.

Rights of lesbian, gay, bisexual, transgender and intersex people

Kyrgyzstan accepted two recommendations concerning discrimination on the grounds of sexual orientation and gender identity,³ and one recommendation concerning violence against LGBTI persons.⁴ While Amnesty International welcomes the former, the organization is concerned that Kyrgyzstan's rejection of recommendations to enact legislation to prohibit discrimination on the basis of sexual orientation,⁵ and to withdraw the draft law on "formation of positive attitudes to non-traditional sexual relations",⁶ reflects a lack of real commitment to protect LGBTI rights. For more information, please see below.

Torture and other ill-treatment

Kyrgyzstan accepted 12 recommendations to combat torture and other ill-treatment, including to provide the National Centre for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment (NCPT) with the financial resources necessary to allow it to function effectively and independently and to implement the National Plan to Combat Torture.⁷ However, the UN Special Procedures have repeatedly highlighted the failure of the authorities to promptly, impartially and fully investigate allegations of torture and other ill-treatment and to

¹ Report of the Working Group of the Universal Periodic Review, A/HRC/29/4, paragraphs 117-119, and Addendum, A/HRC/29/4/Add.1.

² A/HRC/29/4, recommendations 119.1 (Austria) (Romania); 119.2 (Ghana); 119.3 (Indonesia); 119.4 (Algeria); 119.5 (Japan); 119.6 (Spain).

³ A/HRC/29/41, recommendations 117.42 (Sweden), 117.43 (Slovenia).

⁴ A/HRC/29/4, recommendation 117.42 (Sweden).

⁵ A/HRC/29/4, recommendations 118.20 (Canada), 118.22 (Chile), 118.24 (Netherlands).

⁶ A/HRC/29/4, recommendation 118.21 (Austria).

⁷ A/HRC/29/4, recommendations 117.16 (Switzerland), 117.17 (Chile), 117.45 (Turkmenistan), 117.46 (Austria) and 117.47 (United Kingdom), 117.50 (Czech Republic), 117.48 (United States of America), 117.49 (Uruguay), 117.51 (Hungary), 117.52 (Portugal), 117.53 (Republic of Korea), 117.54 (Serbia), 117.93 (Australia).

prosecute perpetrators.⁸ Please see below.

Impunity for past human rights violations

Amnesty International welcomes Kyrgyzstan's acceptance of recommendations calling for full and impartial investigations into the human rights violations that occurred during the June 2010 violence, with special attention to allegations made by members of ethnic minorities,⁹ including reports of sexual violence and torture and ill-treatment in custody.¹⁰ The organisation is disappointed, however, that Kyrgyzstan rejected recommendations to adapt recruitment guidelines for the police and the security forces to increase the representation of ethnic minorities,¹¹ and to adopt comprehensive anti-discrimination legislation.¹²

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Prevention of torture and other ill-treatment

Since 1 January 2019, a new Criminal Code and Criminal Procedural Code have come into effect. These Codes reinforce guarantees against torture and other ill-treatment by clearly outlawing torture and other ill-treatment and excluding any evidence gained through torture and other ill-treatment, clarifying when detention starts and thus ensuring that detainees have the right to a lawyer from the moment of arrest. The new Criminal Procedural Code also specifies that once a torture complaint has been made medical evidence must be gathered within 12 hours.

Discrimination

A draft law on anti-discrimination was presented to Parliament in May 2017; however, it was withdrawn for further discussion in March 2018, because some of its provisions were not in line with Kyrgyzstan's international human rights obligations.¹³

The Constitution protects against discrimination on any grounds (Article 16), but does not specifically mention sexual orientation and gender identity as protected grounds. There is no anti-discrimination legislation that would encompass discrimination on the basis of sexual orientation and gender identity in Kyrgyzstan.

In January 2019, the government began drawing up a National Action Plan on the implementation of recommendations issued in 2018 by the UN Committee on the Elimination of Racial Discrimination.

In March 2018, a new Programme on the protection of mental health of the population of Kyrgyzstan for 2018-2030 came into force. Among its guiding principles is the protection of human rights and the exploration of alternatives methods of supporting people with mental health conditions. However, people with physical and mental disabilities continue to face significant barriers to inclusion in society.

International human rights treaties

On 14 March 2019, President Sooronbay Jeenbekov signed a bill to ratify the Convention on the Rights of Persons with Disabilities, previously adopted by Parliament.

Kyrgyzstan has signed but not yet ratified the Rome Statute of the International Criminal Court.

⁸ See for example, Fundamental legal safeguards must protect all detainees from torture, UN rights experts tell Kyrgyzstan, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23665&LangID=E>.

⁹ A/HRC/29/4, recommendations 117.48 (USA), 117.50 (Czech Republic), 117.53 (Republic of Korea), 117.97 (United Kingdom of Great Britain and Northern Ireland), 117.98 (Argentina), 117.99 (Mexico).

¹⁰ A/HRC/29/4, recommendations 117.97 (United Kingdom), 117.98 (Argentina) and 117.99 (Mexico).

¹¹ A/HRC/29/4, recommendation 118.17 (Germany).

¹² A/HRC/29/4, / recommendations 118.18 (Czech Republic), 118.19 (Poland), 118.20 (Canada).

¹³ Sexual orientation and identity have not been included as criteria for discrimination

The government has not yet fully implemented the recommendations by the UN Human Rights Committee in 14 opinions issued in relation to individual complaints, despite a decree issued in November 2017 to cooperate fully with UN Human Rights Treaty bodies.¹⁴ In all 14 opinions the Human Rights Committee found violations of the rights protected in the International Covenant on Civil and Political Rights.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Prisoner of conscience

Azimjan Askarov, an ethnic Uzbek human rights defender, continues to be detained as a prisoner of conscience. He had documented violence, killings and arson attacks against mostly ethnic Uzbek communities by Kyrgyz state and non-state actors during violent unrest in the south of Kyrgyzstan in June 2010. Azimjan Askarov was sentenced to life imprisonment in September 2010 following a trial that did not meet international fair trial standards. The charges against him were fabricated and politically motivated, and he alleges that he was tortured while in detention.

In March 2016, the UN Human Rights Committee recommended that Azimjan Askarov be released immediately, recognizing that he had been tortured, denied the right to a fair trial and detained arbitrarily and under inhumane conditions. In response, the authorities agreed to a retrial which opened in July 2016. On 24 January 2017, the Chui Regional Court completed the retrial and upheld his conviction and life sentence for “participating in ethnic violence and the murder of a police officer” in 2010. Following this ruling, the UN Office of the High Commissioner for Human Rights stated that the Court’s decision highlighted “serious shortcomings in the country’s judicial system”. An appeal against the decision is currently pending with the Supreme Court.

In February 2019, following amendments to the Criminal and Criminal Procedural Codes that entered into legal force in January 2019, Azimjan Askarov lodged a request with the courts to review his life sentence. The amendments removed a number of articles and provisions from the Codes, including the provision under Article 30 of the Criminal Code (complicity in the murder of a police officer), under which Azimjan Askarov had been given the maximum available punishment of life imprisonment. The court review was scheduled for 30 July 2019.

Azimjan Askarov’s health has deteriorated while in detention, especially since he was moved in March 2019 to a prison camp outside Bishkek for those serving life sentences. He has been denied necessary and adequate medical assistance, including not moved to a hospital facility outside the penitentiary system and not given access recently to independent medical professionals. The UN Human Rights Committee reminded Kyrgyzstan in 2016 of its obligations under international law to provide Azimjan Askarov with necessary medical care.¹⁵

Violence against women

According to UNICEF, 13.8 percent of women aged under 24 were married through some form of coercion.¹⁶ “Bride kidnapping” is an illegal traditional practice in Kyrgyzstan, punishable by law with up to seven years’ imprisonment. However, abductions persist due to lack of reporting to the police and social perceptions of this harmful practice as a “tradition”. In many cases the abduction is followed by rape. On 27 May 2018, Burulay Turdaliyeva, a 20-year-old medical student was kidnapped and murdered. Following her abduction, the car she was in was stopped by the police, and Burulay and her abductor were brought to the local police station. However, the police officers failed to disarm her abductor and he stabbed and killed her in police custody. The perpetrator was sentenced to 23 years in prison in December 2018.

¹⁴ 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.

¹⁵ Human Rights Committee, “Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2231/2012”, CCPR/C/116/D/2231/2012, 21 April 2016.

¹⁶ UN statement on bride kidnapping and child marriage, <https://www.unicef.org/kyrgyzstan/press-releases/un-statement-bride-kidnapping-and-child-marriage>

Rights of people with disabilities

People with physical and mental disabilities face many barriers to inclusion in Kyrgyzstan, including being unable to access public buildings, such as schools, government institutions and hospitals, and are unable to travel by public transport. This is a violation of Article 9 of the CRPD which obliges states to guarantee equal access to persons with disabilities. According to the UN Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, health-care services in Kyrgyzstan are still based on “a narrow and outdated biomedical model” with “an excessive reliance on institutional care”.¹⁷ According to a report by the Kyrgyzstan Ombudsman the conditions in psychiatric institutions constitute inhuman and degrading treatment.¹⁸ The Civil Code retains provisions making it possible to deprive people of legal capacity if “as a result of a mental disorder they cannot understand the meaning of their actions or control them”, and appoint a guardian over them. This is in violation of Article 12 of the CRPD which guarantees equal recognition before the law.

Rights of lesbian, gay, bisexual, transgender and intersex people

LGBTI people continue to face discrimination and violence by state and non-state actors.

The LGBTI rights group Labrys continues its efforts to bring to justice the suspected perpetrators of a violent attack in 2015 against its office and against a private event to mark the International Day against Homophobia and Transphobia. Criminal trials against the members of a nationalist youth group behind the attacks collapsed when the victims named in the court documents were “reconciled” with the perpetrators.

On 1 May 2019, a small picnic in a park in Bishkek organized by the feminist and LGBT movement “8/365” was disrupted by the arrival of over 20 young men, including members of a right-wing nationalist group who threw eggs and paint at the eight picnic participants and by-standers, filmed, insulted and threatened them. Police officers present at the park did not intervene to stop the men from threatening and attacking the outnumbered picnic participants. The “8/365” organisers subsequently lodged a formal complaint against their attackers with the police, which is currently being investigated.

Torture or other ill-treatment

Cases of torture and other ill-treatment persist in Kyrgyzstan despite a programme of independent monitoring of places of detention established in line with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the establishment of the NCPT.

According to a response by the Prosecutor General's Office to an enquiry from the NGO Coalition against Torture, in the first nine months of 2018 there were 435 reports of torture and other ill-treatment, 33 criminal cases were opened, 11 cases were sent to court. In 2016 there was one conviction for torture and other ill-treatment.

In 2018, a joint study by the NGO Coalition against Torture and the NCPT to assess torture and ill-treatment of individuals detained in pre-trial detention centres throughout 2017, found that one in three of the 679 respondents (30.2 percent) stated that they had been subjected to unjustified physical force or violence during arrest and detention.¹⁹

In its 2016 Annual Report, the NCPT found that in 94 percent of the cases investigated by NCPT experts the police officers had used torture in order to extract confessions from suspects and detainees.²⁰

¹⁷ Visit to Kyrgyzstan, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 8 May 2019, file:///C:/Users/heather.mcgill/OneDrive%20-%20Amnesty%20International/Downloads/A_HRC_41_34_Add-1-EN.pdf

¹⁸ Rights of persons who are in psychiatric hospitals, <https://ombudsman.kg/files/docs/reports/2016/the-rights-of-the-persons-who-are-in-the-psychiatrist-hospitals.pdf>

¹⁹ Otchet o rezultatah monitoringa ivs organov vnutrennih del kr za 2016-2018, <https://notorture.kg/files/pdf/otchet-o-rezultatah-monitoringa-ivs-organov-vnutrennih-del-kr-za-2016-2018-gg-pdf.pdf>

²⁰ Annual report of the National Center for Prevention of Torture for 2016, page 27

According to statistics compiled by the NCPT since its inception, prosecutors have opened criminal cases into only 28 cases of torture and ill-treatment, and in only three percent of the complaints referred to their offices for investigation by the NCPT.²¹

Following their visit to Kyrgyzstan in September 2018 the UN Subcommittee on Prevention of Torture concluded that the majority of its recommendations from their first visit in 2012 had not been implemented “including with regards to the safeguards for apprehended people which against are not protecting them appropriately”.²²

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Kyrgyzstan to:

Ratification of human rights standards and cooperation with the UN

- Ratify the Rome Statute of the International Criminal Court and enact implementing legislation.

Prisoner of Conscience

- Release Azimjan Askarov immediately and unconditionally in accordance with the decision of the UN Human Rights Committee.

Torture and other ill-treatment

- Ensure that investigations into allegations of torture and other ill-treatment are carried out by an independent body and that preliminary investigations into such complaints are carried out and completed without delay upon receipt of a complaint;
- Ensure that all officials allegedly responsible for torture are suspended from official duties;
- Ensure that the new provisions of the Criminal and Criminal Procedural Codes outlawing torture and other ill-treatment, clarifying when detention starts and ensuring that detainees have the right to a lawyer from the very moment of arrest, are fully observed and any evidence obtained through torture excluded.

Rights of people with disabilities

- Amend Article 64 and Article 67 of the Civil Code and consider alternative methods of support for people with mental disabilities in line with the CRPD;
- Remove barriers to inclusion in public life for people with physical disabilities, including by ensuring that all public buildings, such as schools, hospitals and government institutions, are fully accessible.

Violence against women

- Send a clear message that bride kidnapping will not be tolerated and ensure that all cases are prosecuted.

Rights of LGBTI people

- Ensure that the draft law on anti-discrimination is amended to include sexual orientation and gender identity as criteria, in line with international human rights standards, and passed by parliament to enter into force without delay;
- Investigate in a timely and effective manner all allegations of hate crimes against LGBTI people and hold

²¹ Report the National Center for Prevention of Torture on the determination of the index of torture in IVS and SIZOs in the Kyrgyz Republic, Bishkek, 2018, p.16

²² Fundamental legal safeguards must protect all detainees from torture, UN rights experts tell Kyrgyzstan, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23665&LangID=E>

those found responsible to account.