



**JOINT SUBMISSION OF THE COALITION AGAINST TORTURE IN KYRGYZSTAN
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This joint submission is prepared by the Coalition against Torture in Kyrgyzstan - an informal network of human rights organizations, civic activists and journalists who have joined efforts to fight against torture and other cruel, inhuman or degrading treatment or punishment.

Coalition against Torture in Kyrgyzstan includes:

- 1) ANGO "Human Rights Advocacy Center"
- 2) Public Foundation "Accent"
- 3) Public Foundation "Voice of Freedom"
- 4) Public Foundation "Golos Svobody" ("Voice of Freedom")
- 5) Center for Human Rights Protection Kylym Shamy (CHRPKS)
- 6) Public Foundation "Child Right's Defenders League"
- 7) Public Foundation "Legal Prosperity"
- 8) Public Foundation "Ray of Solomon"
- 9) Public Foundation "Legal Initiative Bishkek"
- 10) Public Foundation "Defender of Human Rights and Freedoms"
- 11) Public Foundation "Positive Dialogue"
- 12) Public Association "Union of Unity"
- 13) The social and legal spectrum "Spectrum"
- 14) Regional human rights organization "Spravedlivost" ("Justice")
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I. INTRODUCTION

Since independence, Kyrgyzstan has become 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.¹ In 2003, torture was criminalized in domestic legislation. As part of measures to improve justice in the Kyrgyz Republic, 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.²

The Kyrgyz government has adopted an Action Plan to combat torture³ and implementation is underway through cooperation between government agencies, international and local non-governmental organizations, including the Coalition against Torture.

In recent years the Government of the Kyrgyz Republic showed affirming political “to change e situation for the better in the fight against torture”⁴. However, these positive changes in this area are not enough. The practice of torture by law enforcement is still ongoing. 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.

However, despite the measures taken by the torture continues to be a serious violation of human rights. This is evidenced by results of Index of assess torture and ill-treatment of persons detained in remand prisons (SIZOs) and temporary detention facilities (IVSs) according which 30 per cent respondents stated that they had been subjected to unjustified physical force or torture by law enforcements bodies⁵. 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.

In 2018, a selective struggle against corruption, the increasing role of law enforcement agencies in the fight against extremism and terrorism and other factors had a negative impact and worsened the situation with torture. It is necessary to note that the number of criminal cases against torture have increased, but only a few have been prosecuted for these charges. This shows that one of the main reasons of preventing the eradication of torture is the impunity of torture acts.

A major obstacle to the eradication of torture is lack of adequate and effective investigation. A comparative analysis of the results of the consideration of torture complaints received by the prosecutor’s office in the context of increase in refusals to initiate criminal proceedings against alleged perpetrators⁶ indicates downfall of effectiveness of investigating torture complaints. In

¹ Constitution of Republic of Kyrgyzstan Article 6 part .3.

² 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”.

³ Approved by Governmental Order of October 23, 2014. №469-p.

⁴ Security Council: The State and Society should jointly eradicate torture.

See: https://kaktus.media/doc/382438_sovbez_gosydarstvo_i_obshestvo_vmeste_doljny_iskoreniat_pytki.html

⁵ Report on the Index of torture in detention facilities in the Kyrgyz Republic / Joint Report of the Coalition against Torture and the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Bishkek, 2018 // <https://notorture.kg/publication/publikacii-koalicii.html>

⁶ Statistics from the Annual Report of the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NCTP) for 2017 (www.npm.kg) and the official response of the General Prosecutor's Office of the Kyrgyz Republic to the request of PF “Voices of Freedom” dated November 8, 2018)



addition, these indicators raise issues of impartiality of registration and effectiveness of investigation mechanisms in consideration of torture complaints.⁷

The prevailing practice of legal assessment of torture and ill-treatment in a lesser form — abuse of authority (article 321 of the Criminal Code “Excess of Power”) creates a selective approach to the definition of torture, which does not provide accurate quantitative data on torture and cruel, degrading treatment. The lack of statistical data on torture and ill-treatment makes it impossible to analyze, adequately assess the situation and plan preventive measures in this regard.

An analysis of the cost of the legal, economic and social consequences of torture and ill-treatment in 2018 showed that torture and ill-treatment caused enormous economic damage to the state budget. The total cost of expenses for each case of torture averaged from 2 million 845 thousand to 4 million 97 thousand soms.⁸

II. PREVALENCE OF TORTURE AND ILL-TREATMENT

In 2018, a joint study by the Coalition against Torture and the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (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 Kyrgyzstan⁹.

For the period 2016-2018, the General Prosecutor’s Office registered 1,140 allegations of torture and ill-treatment, of which 435 in 2016, 418 in 2017, and 377 in 2018.¹⁰ Thus, there are fewer 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. As a rule, this may be either the result of the effective steps taken by actors involved in the fight against torture, including human rights defenders, or else it may indicate a lack of trust in existing mechanisms of legal protection and fear of subsequent reprisals. Coalition against Torture research shows 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.

The Coalition against Torture’s 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 facility (IVS) cells in inhuman and degrading conditions. The police argue that

⁷ Ambaryan A. Problems of combating torture in the Kyrgyz Republic. Bishkek, 2018, p.12 // <https://notorture.kg/files/pdf/Obzor%20po%20pytkam.pdf>

⁸ Research on cost of legal, economic and social consequences of torture in the Kyrgyz Republic. Bishkek, 2018, p. 70 // <https://notorture.kg/files/pdf/Issledovanie-stoimosti-pravovyh-meditsinskih-i-sotsialnyh-posledstvij-pytok-v-Kyrgyzskoj-Respublike.pdf>

⁹ Report on the Index of torture in detention facilities in the Kyrgyz Republic, Bishkek, 2018 p.12

¹⁰ Official responses of the Prosecutor General’s Office of the Kyrgyz Republic for request of the Coalition against Torture in Kyrgyzstan.



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 died in "temporary detention facilities (IVS)" and in duty units.

For example: In September 2018, a detainee, T.U. born in 1953, who was arrested on theft (abaction) charges, committed suicide (hanged himself) in a cell of IVS of the Department of Internal Affairs of the Ton District of the Issyk-Kul Region. A criminal case has been initiated on this fact and an investigation is underway.

Recommendations:

- 1) 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.**
- 2) 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.**
- 3) Eliminate the practice of illegal detention in the temporary detention facilities of suspects due to problems with transfer to the SIZO. For each such violation identify the officials responsible.**

III. 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. According to official statistics only a few perpetrators have been convicted and imprisoned for torture since torture acts were criminalized in 2003.

Table 1. Official statistics of the Prosecutor General's Office

Position	Period		
	2016	2017	2018
Refusal to initiate a criminal case	400 (91,9%)	383 (91,6%)	350 (92,8%)

According to NCPT statistics, since NCPT was established, prosecutors' offices have opened criminal cases into only 28 cases of torture and ill-treatment, or in 3 percent of the cases sent to the NCPT.



One of the key reasons for impunity is the existing system of investigating torture. 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 leads to the lack of adequate punishment and, accordingly, compensation.

Currently, all allegations of torture are considered by the State Committee for National Security (GKNB), which, according to the specifics of the work, is confidential. Research shows that the GKNB has a shortage of trained personnel with specialist knowledge and experience in the field of investigating torture allegations. In addition, the State Committee for National Security is a multi-purpose agency, possessing both the powers of law enforcement agencies and the functions of special secret services. Therefore, conflicts of interest inevitably arise when conducting inspections and investigating allegations of torture and ill-treatment by law enforcement agencies .

The principle of independence and effectiveness also means that the findings of the investigation cannot be based only on the testimony and explanations of the officers accused of the abuses. However, most sentences in criminal cases are based primarily on confessions given during the investigation, a practice that is often encouraged by courts who overly relying on confessions when evaluating evidence.

As a result, the situation regarding the purpose of torture towards a suspect has not changed. In nine out of ten cases of torture, police officers use it to coerce a detainee to confess to a crime, thereby “solving the crime”. The percentage of crimes solved is an important indicator of the success of the officer and the unit in which he works.

In the absolute majority of cases (94%), torture is used by operative officers of the internal affairs bodies in order to extract confessions.¹¹

If during the trial, the defendant claims that the confession was obtained under torture, the courts usually either ignore such statements or carry out a superficial investigation, simply by interrogating the police officers in court. Such ingrained court practice makes it difficult to combat torture and impunity.

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 officials 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”.***

¹¹ Annual report of the National Center for Prevention of Torture for 2016, page 27.



IV. DOCUMENTING TORTURE

According to the Coalition against Torture monitoring, the most common methods of torture are strangulation with a plastic bag and gas mask; punches and batons; the use of electric shock, 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, therefore, in the absence of other objective evidence, medical evidence plays an important role. Medical examinations should therefore be timely and of high quality. Today, the lack of a proper system for documenting the injuries caused by torture and ill-treatment, and unified standards for conducting 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 in addressing the issue of effective documentation of torture and to ensure the realization of the right of every person to protection and effective investigation, in 2014 the Ministry of Health developed the Practical Guide 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.¹²

Despite the fact that the Guide is intended for all medical workers of the Kyrgyz Republic, regardless of the level and departmental affiliation of the health organization, in practice it is used only in organizations under the Ministry of Health, which is chaotic and uncontrolled. The vast majority of medical personnel still do not have specific training on how to assess and document cases of torture and ill-treatment. Medical professionals of medical services subordinate to law enforcement agencies, the Guide does not apply at all.

Recommendations:

- 1) ***Approve and ensure the effective implementation of the Action Plan on implementation of principles of the Guidelines for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) for 2019-2020.***
- 2) ***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.***
- 3) ***Ensure compliance with international standards by state and non-state experts to ensure uniformity of forensic medical evaluations and reports.***

¹² 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.



- 4) ***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.***
- 5) ***Ensure the independence of state judicial expert services and to increase the capacity of independent, non-state expert services.***

V. NATIONAL PREVENTIVE MECHANISM

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). In July 2016, for the first time in 7 years of its operation, the NPM was fully staffed. The National Center received more than 900 complaints, authorities initiated 45 criminal cases, 28 of them under the Article "Torture". The National Center submitted 6 annual reports to the Parliament, 5 of which were reviewed by the Parliament and relevant recommendations were provided to the state bodies.

Obstruction of NPM activities

Over the past five years, 46 incidents of obstruction of NPM activities were recorded and 3 criminal proceedings were initiated regarding these incidents. Currently, the prohibition of interfering and obstructing of activities of the National Center's staff and members of the Coordination Council has been excluded from the new Criminal Code and the Code of Misconduct. Accordingly, there no criminal or other forms liability, except for the liability provided for in the Code of Violations. However, even the Code of Violations does not precisely provides prohibition interfering and obstructing of activities of the National Center, instead there is only an article on obstruction and interference in the activities of a state body, which provides for a small fine.

Quorum of the Coordination Council of the NPM

Despite the participation of representatives of civil society, in particular, non-profit organizations in the activities of the NPM as members of the Coordination Council, the fact of paralysis of this supervisory body during the year causes concern. Currently, Kyrgyz Parliament is sabotaging activities of the Coordinating Council of the National Center for prevention of torture. Under the Law the Coordination Council is the highest governing body of the National Center and consists of eleven members:

- 1) *Akyikatchy (Ombudsman);*
- 2) *two deputies of the Kyrgyz Republic Jogorku Kenesh (parliament) proposed by a parliamentary majority and opposition accordingly;*
- 3) *eight representatives of non-commercial organizations whose statutory activities are related to the protection of the rights to freedom from torture, cruel treatment and punishment.*

In September 2018, four representatives of NGOs step-down their membership for various reasons. Since then, two deputies are ignoring the meetings of the Coordinating Council which cannot establish a quorum for its mandate. Therefore, the governing body is paralyzed to take any meaningful actions including to adopting budget for 2019, plan of monitoring visits and many others. In addition, the Parliament has not yet approved the Regulation on the formation of a Working commission on selection of members of the Coordinating Council of NPM.

Recommendations:



- 1) *Director of the National Center should speed up the process of selecting of members Coordinating Council from among NGOs, publish announcements about opening vacancies; use all methods established by law in order to encourage the Parliament to approve the Regulation on the selection of a Working commission on selection of members of the Coordinating Council of NPM.*
- 2) *Director of the National Center should involve the remaining members of the Coordinating Council in the work process, ensuring continuity in the implementation of the mandate of the National Center and its functioning.*

General misunderstanding of the NPM mandate

External observers and experts note a general tendency regarding the lack of understanding by state bodies and their officials of the overall mandate of the NPM, its institutional goals and objectives. As the consequence, the roles of the NPM, the Ombudsman Institute and the prosecution authorities are overlapped.

Recommendations:

- 1) *Inform the general public and state authorities about mandate of the NPM, in order to eliminate misunderstandings, through direct dialogue at governmental and parliamentary levels*
- 2) *The National Center and the Ombudsman should implement guidelines on interaction related to monitoring detention facilities and reviewing allegations of torture and other cruel treatment in order to avoid duplication and interference with each other's competencies.*

Initiatives to amend the NPM Law

Members of the Coalition of Kyrgyzstan against Torture have reasonable and reliable information that some parliamentarians advance the initiative to abolish the National Center and transfer its functions to the Ombudsman. Also, there is an initiative to change conditions of appointment of the director of the National Center and change its mandate.

Recommendations:

- 1) *The Parliament of the Kyrgyz Republic should avoid initiatives to make changes and amendments to the Law "On the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel Treatment" which affects its current structure and undermine its institutional independence.*
- 2) *The Parliament of the Kyrgyz Republic should also ensure a quorum of the Coordination Council.*

Insufficient funding for NPM

In accordance with article 18 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the States Parties shall guarantee the functional and financial independence of the national preventive mechanisms as well as the independence of their personnel. However, currently funding of the National Center is available only for so-called "protected budget items" (wages, payroll taxes, and etc.). The National Center has no capability to fully operate because of insufficient funding. There is no opportunity for preventive visits because of lack of funding. In such circumstances, there is a risk of insufficient preventive visits.



Recommendations:

- 1) *Provide functional and financial independence of the national preventive mechanism, providing all the necessary resources, in accordance with Article 18 of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- 2) *Provide timely implementation of the recommendations of the national preventive mechanism to the public authorities.*

VI. IMPLEMENTATION OF DECISIONS OF INTERNATIONAL HUMAN RIGHTS BODIES

Up to date the Kyrgyz Republic has recognized the complaint mechanisms of the UN Human Rights Committee (HRC) and the UN Committee on the Elimination of Discrimination against Women (CEDAW). The HRC (ICCPR) considered 24 complaints, with dozens have been registered. Also, one case is registered in CEDAW. Kyrgyzstan did not recognize the competence of the Committee against Torture, to receive and consider individual communications in accordance with article 21 of the Convention against Torture.

In over a dozen decisions, the UN Human Rights Committee (HRC) recognized that Kyrgyzstan violated the right to freedom from torture under Article 7 of the ICCPR and recommended the state to take measures of redress and pay compensation to the victim.

Despite the fact that the Government regulates the mechanism 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 most UN HRC decisions. It should be noted that this procedure does not provide for the annulment of a court decision or a new trial on the merits. At present, the position of state bodies of the Kyrgyz Republic on denying the legal obligation to enforce and implement decisions of the UN HRC is based solely on the advisory nature of the decisions of the HRC to the state on more complete and effective implementation of the norms of human rights treaties.

For example: 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 the Kyrgyz authorities to release him. Kyrgyzstan has not fulfilled the recommendation.

One of the key legal obligations for 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 of the year).

The 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. In addition, other types of compensation, such as a public apology and guarantees of non-repetition in the future, are not available to victims of torture, and such measures are not provided by law in the Kyrgyz Republic.



Recommendations:

- 1) *Ensure full implementation of decisions of international human rights bodies.***
- 2) *Make a declaration accepting the competence of the Committee against Torture to consider individual complaints under Article 22 of CAT.***

VII. THE SECURITY OF HUMAN RIGHTS DEFENDERS

On 6 April 2019, a two-room office of the Public Foundation “Spectr”, a member of the Coalition against Torture, was burned down. According to the Coalition, unknown persons set fire to the office, but before that they were looking for something. According to the representative of “Spectr” “everything has been turned upside down. Fire destroyed documents and cases of the organization that have been developed over many years.”

On 23 May 2019, a group of nine unknown individuals carrying cameras and voice recorders, who later introduced themselves as representatives of the Youth Patriotic Movement of Kyrgyzstan, broke into the conference room where the Coalition’s meeting was being held, aggressively demanding it to stop. They claimed that Western countries and the organisations financed by them were trying to destabilise peace in Kyrgyzstan. The meeting participants filmed the intervention and filed a complaint to the Alamedin District Department of Internal Affairs of the police for “hooliganism” and obstruction of the professional activities of an attorney at law.

Front Line Defenders expresses its concern about the attack against the professional activities of the Coalition against Torture, as it is believed to be solely motivated by the peaceful and legitimate human rights work of the Coalition, and aimed at intimidating and harassing human rights organisations working on torture and ill-treatment.

Recommendations:

- 1) *Conduct immediate, thorough and impartial investigation of the aggressive intervention in the Coalition against Torture workshop, publicize its results and bring those responsible to justice.***
- 2) *Provide all human rights defenders of Kyrgyzstan with the opportunity to conduct legal human rights activities in any circumstances without restrictions and without fear of retaliation.***